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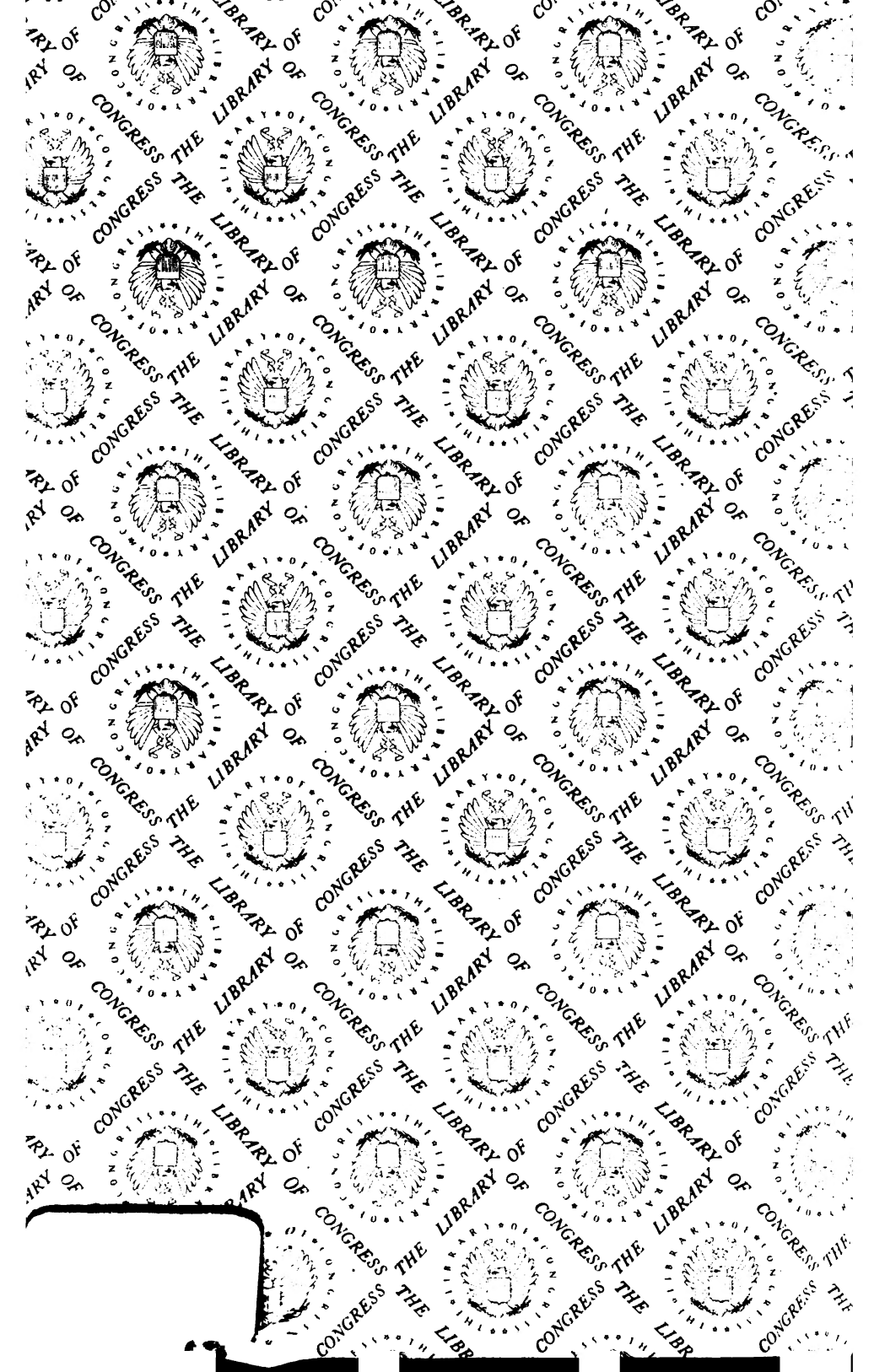
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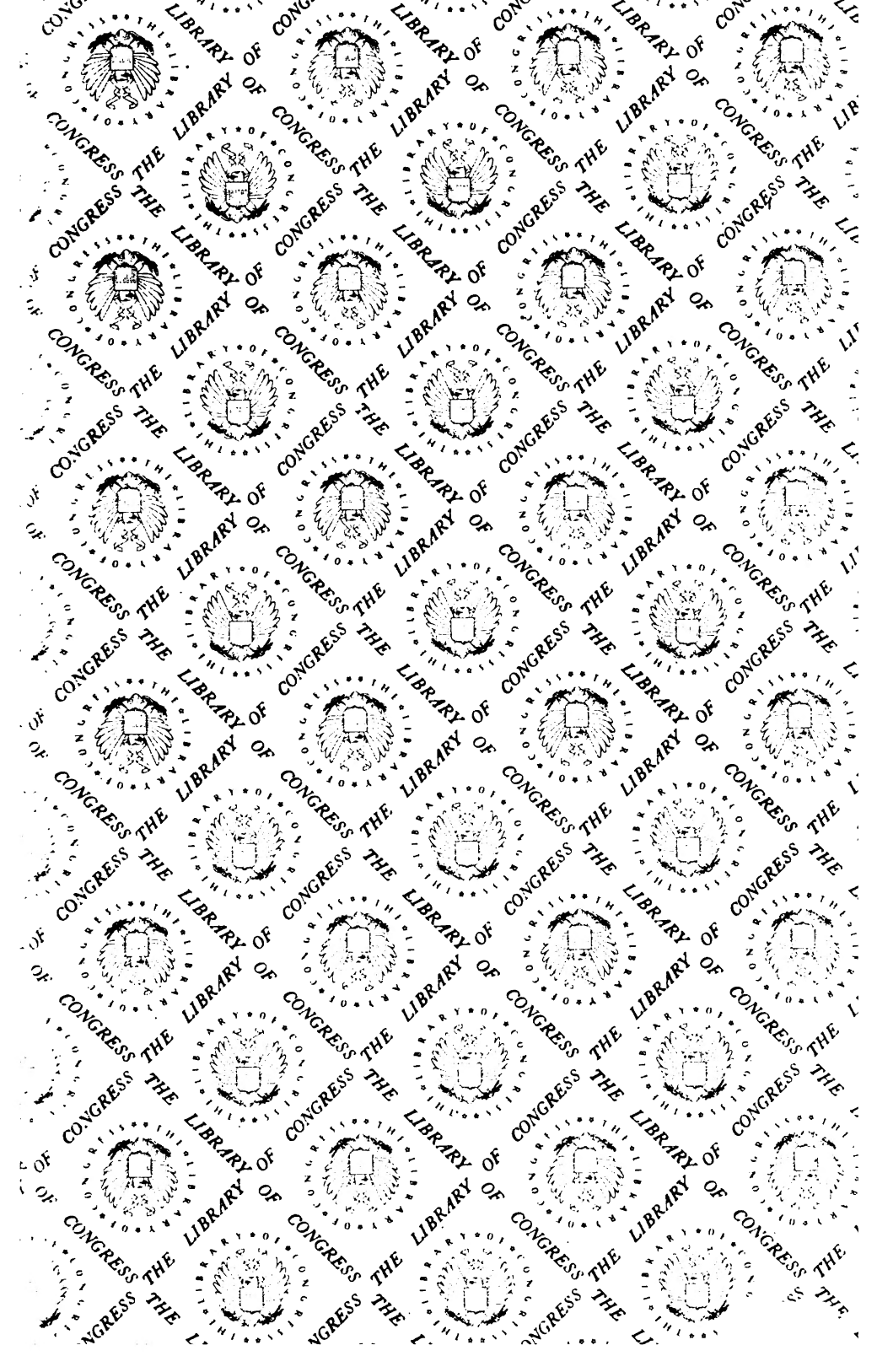
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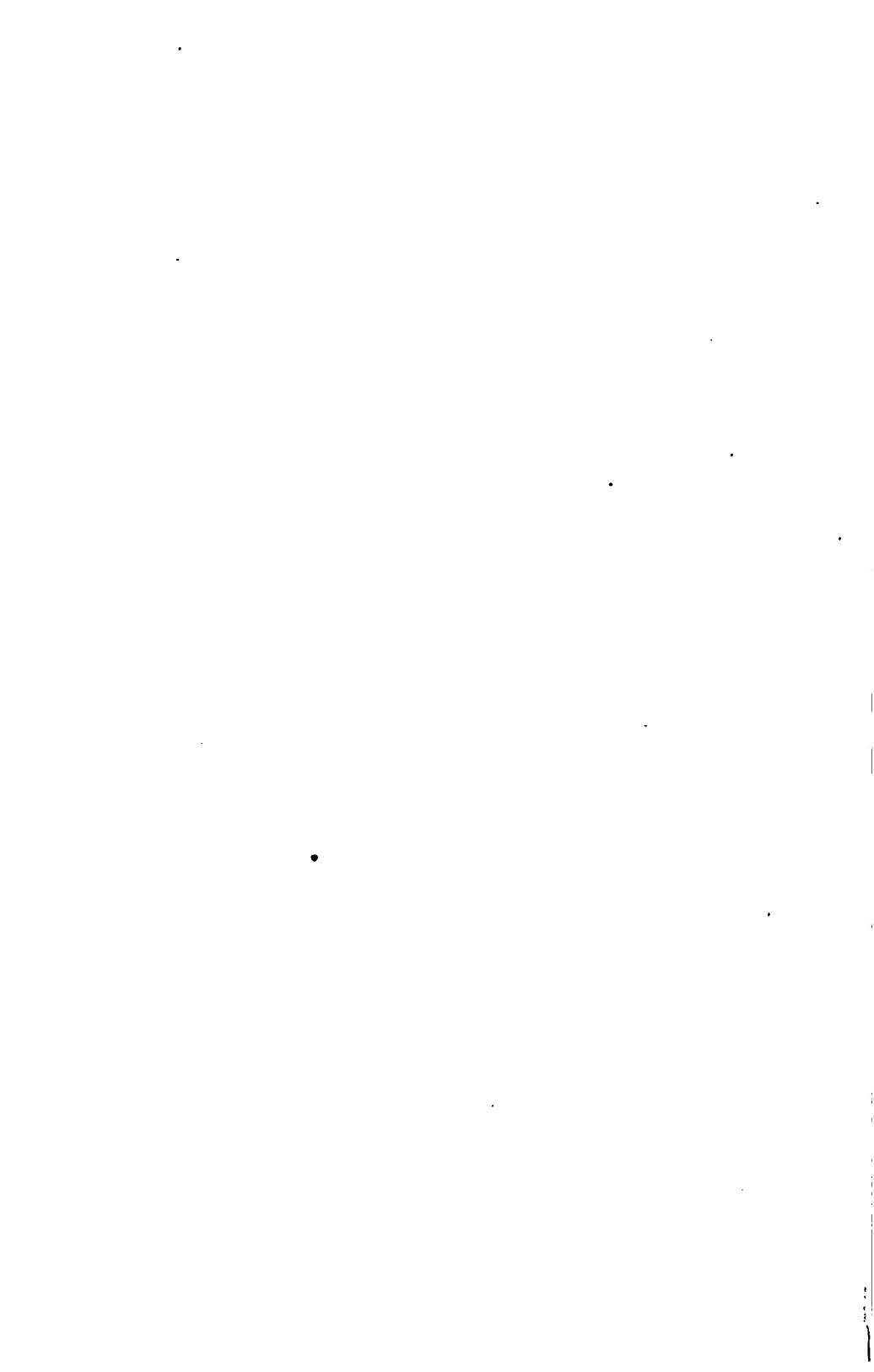
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HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA.

REPORT

OF

HEARINGS OF JANUARY 16, 1905,

ON

HOUSE BILLS 11811 AND 12303:

TO AMEND THE CODE OF LAW FOR
THE DISTRICT OF COLUMBIA REGARD-
ING CORPORATIONS. * * * *

Printed for use of the Committee.

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AMENDMENTS TO THE CODE OF LAW FOR THE DISTRICT OF
COLUMBIA REGARDING CORPORATIONS.

COMMITTEE ON THE DISTRICT OF COLUMBIA,
HOUSE OF REPRESENTATIVES,
Washington, D. C., January 16, 1905.

The committee met this day at 10.30 o'clock a. m., Hon. Joseph W. Babcock, chairman, presiding.

Hearings were granted on House bills 11811 and 12303 proposing to amend the Code of Law for the District of Columbia regarding corporations to Messrs. F. L. Siddons, E. W. McCormick, James R. Garfield, Commissioner of Corporations, and John C. Dancy, recorder of deeds.

The CHAIRMAN. Gentlemen of the committee, this is a special meeting for the purpose of taking up and considering the different bills and propositions to amend the Code of the District regarding corporations. Several parties in the city have requested permission to be heard, and the chairman would like to be advised as to those present desiring to be heard. I notice Mr. Garfield is present.

Mr. SIDDONS. I would like to be heard, Mr. Chairman.

The CHAIRMAN. Whom do you represent?

Mr. SIDDONS. I do not represent anybody but myself.

The CHAIRMAN. You represent yourself?

Mr. SIDDONS. Yes.

Mr. McCORMICK. I desire to be heard for the firm of E. W. McCormick & Co.

The CHAIRMAN. Well, first, Mr. Garfield, if you will be kind enough to give us your views we shall be glad to hear from you.

Mr. GARFIELD. If it meets the approval of the committee, I would prefer first to hear what the other gentlemen may say, so that I may take up such points as may come under objection by the Bureau of Corporations.

The CHAIRMAN. Very well.

STATEMENT OF MR. F. L. SIDDONS.

Mr. SIDDONS. Mr. Chairman and gentlemen of the committee, I did not know until this morning, when I heard it by accident, that the bills pending before you would be considered for hearing this morning; otherwise I would have come here better prepared to discuss the specific provisions of the bills you have here on the table. But with your permission I would like to say some few words generally about

the situation of the general incorporation laws of the District, which are found in Subchapter IV of the Code of the District of Columbia, which went into effect January 1, 1902.

That law broadened very much the corporation laws of the District by permitting any three or four persons who desire "to form a company for the purpose of carrying on any enterprise or business which may be lawfully conducted by an individual, excepting banks of circulation or discount, railroads, and such other enterprise or business as may be otherwise especially provided for in this Code," etc.

That law, I say, went into effect on the 1st of January, 1902, and in the two years ending December 31, 1904, under the operation of this Subchapter IV, there have been organized 2,211 companies, with a combined capitalization of something over \$3,700,000,000.

Only a fraction of these companies were organized under this law to do business in the District of Columbia. Very shortly after the law took effect there were companies formed, or associations of individuals formed for the purpose of incorporating companies under the law. There are now several such in the District of Columbia, but they are not confined to the District of Columbia, and such companies can be found elsewhere throughout the country. Last summer I learned of one in the State of California that had been organized for the purpose of incorporating companies under this law.

As I stated, 2,211 of such companies have been organized under the law during the two years ending December 31, 1904. The law does provide that the majority of the trustees shall be citizens of the District of Columbia. But that provision of the law has been very easily evaded; and in a great many cases, after the corporation has been recorded and the corporation had been organized by the election of its officers, the local trustees that are generally selected by the company, or the individual lawyers instrumental in organizing the company, will resign, so that when the company is regularly doing business elsewhere in the country there is no legal representative here at all.

Now I observe that by House bill 11811 an effort is made to correct that undoubted defect of the existing law by providing that one of the board of directors shall be a bona fide resident of the District of Columbia. I do not think that would accomplish the purpose, for the resident member of the board might resign, will resign, immediately after the organization of the company.

But the bill goes on further to provide that in section 607—that is, the other bill, H. R. 12303. On page 4 it goes on to provide that—

Any action at law or in equity may be begun against such corporation by the service of process upon the director resident in the District of Columbia, as named in its certificate aforesaid, and, in the absence of said resident director from the District of Columbia for the period of ten days or more, service of such process, which shall be deemed good and sufficient service of the same upon the corporation of which he is a director, may be made by leaving such process at the post-office address of the said resident director, as stated in said certificate, in charge of a person of mature years and discretion, or by mailing the same to the said resident director at his post-office address, as stated in said certificate: *Provided, however,* That the company of which such resident director is a director may, in its annual report, or in a certificate duly executed and filed with the recorder of deeds, name a successor to the director named in the certificate filed for the purposes of incorporation as a resident of the District of Columbia, giving the post-office address of such successor, upon whom the service of process may be made in like manner and with like effect as if made upon the director named in the aforesaid certificate as a resident of the District of Columbia, and from time to time, as occasion may require, such company may, by a certificate filed as aforesaid, designate a person, actually resident in the Dis-

trict of Columbia, upon whom process may be served as hereinbefore provided, and service of process upon the person last so designated shall be good and sufficient service upon such company.

I respectfully submit to the committee that that section should be strengthened by providing, after the process shall have been served in that way, some official of the District—the recorder of deeds, for example, or the superintendent of insurance, if you please, or any official of the District—shall be the person or agent of this corporation upon whom the service of process could be had. That at least would accomplish this: We would be able in any action we desired to bring against such nonresident corporation to make a service in the District of Columbia. At present in a great majority of cases there is no possible way to reach, by the process of our local courts, corporations organized under this law and doing business in different parts of the country.

I think, however, that the proposed amendment should go further. I do not apprehend for a moment that this committee or that Congress designed, in enacting the law now on the statute book, to enact a Federal corporation law; and yet, in some quarters at least, efforts have been made to give that impression to the people in the country. And if the committee will indulge me a few moments, I want to read a few words from the prospectus of the California Incorporation Company, organized under the District law. It says:

A corporation organized pursuant to this act of our National Congress, approved by the President of the United States, at once assumes a dignity and takes a financial rating and eminence, both at home and abroad, that could be secured in no other way, certainly not from any one of the States, and not even by the expenditure of the large amount of money exacted by the oppressive requirements of their corporation laws.

The impression is abroad in the country that this law is Federal in its scope, Federal in the corporate powers it confers upon its incorporators. But I understand the intention of Congress was to make it distinctly a local corporation law, such as a State may enact, and I think the law should be strengthened by inserting in it provisions and amending it by requiring that at least the executive officers of all companies incorporated under this law should be maintained in the District of Columbia, and that the books in connection with the executive officers should be kept in the District of Columbia.

Under the present law you require a stock book of the company to be kept in the District of Columbia, open to the inspection of those who may be concerned with the affairs of the corporation, but that is all. And while reading some sections of the existing law one might assume that it was intended that the companies should be here. But as a matter of fact it does not provide anything of the kind.

Now, under the operations of this law up to a very recent date certificates of incorporation would be filed by incorporators who designed to do anything under the sun that they could do under the provisions of this law. Necessarily the recorder of deeds undertook to construe the law, saying that people could not file a certificate to engage in more than one business. The matter was taken to court, and the court took a different view; but the court of appeals, to which the case was then taken, took the ground the other day—in the case of *Dancy v. Clarke et al.*—that the incorporation could only include one kind of business to be conducted by the persons seeking incorporation under the law.

I have not been able to give to the pending bills that amount of reflection and consideration that I would like, but I would urge strongly on the committee the necessity of making this law a local incorporation law, pure and simple. I do not know that it is possible for Congress to so legislate that a corporation once formed here can not go elsewhere, but you should do something, I submit, to check the "tramp" or "perambulating" corporation.

I have the assurance of the recorder of deeds that 95 per cent of the 2,211 companies at the moment of their incorporation here have gone elsewhere. You never hear of them again. They may undertake to file the annual certificate required, but the officers and the office and everything else is somewhere else except in the District of Columbia. That is a condition of affairs that is giving rise repeatedly to something like scandal, in my judgment.

The Commissioner of Corporations, as I understand, is receiving letters from different parts of the country wanting to know about this Federal corporation law. I think the whole law—all of Subchapter IV at least—needs a very thorough overhauling and revision by this honorable committee and by this honorable Congress. The pending bills, I think, do not go far enough.

The CHAIRMAN. Have you considered the bill submitted by the commissioners as a substitute for the Morrell bill?

Mr. SIDDONS. I have not, Mr. Chairman. Here is House bill 12303, introduced by Mr. Goulden. The Morrell bill is House bill 11811. Then there is Senate bill 4848. Perhaps that is more complete.

The CHAIRMAN. Mr. Barney, is not a draft of the bill filed by the Commissioners here?

Mr. BARNEY (clerk of the committee). Here it is [producing draft].

Mr. SIDDONS. Of course, gentlemen, the officials, such as the recorder of deeds, are most concerned about the ridiculously small revenue derived from the organization of these companies. As I stated, it is only slightly in excess of \$2,000. In fact, the deputy recorder of deeds told me he did not believe that the cost of incorporating under the existing law averaged a dollar for each corporation. Although you have 2,211 such companies with this large capitalization, nearly \$4,000,000,000 of capitalization, the total revenue derived from all concerns has been but \$2,000. Of course, the recorder of deeds wants to receive larger revenue.

No incorporation law, I venture to say, in any of the States has been so generous and liberal in the matter of charges for incorporation, and the deputy recorder told me the other day that the counsel for one of the companies engaged in the business of incorporating companies under this law has even contended that all the recorder of deeds could charge is 15 cents for filing. The law does not require that it should be recorded, but only that it should be filed. The recorder has taken a different view of that, and has first filed it and then recorded it, and charged it on his books, bringing the average charge to each company to about \$1.

That itself is ridiculously small, and is not nearly enough to do the work required in the recorder's office.

I would undertake, if the permission were given me, to go carefully over these bills and later on give to the chairman some reflections

upon those bills. But my principal object is to-day to point out what I conceive to be a rather scandalous condition of affairs that needs to be checked, and to suggest that any amendment that is made to the bill therefore should be made by the committee and by Congress, to make these corporations local in fact, as I have no doubt they were intended to be made local in fact by the existing law.

I urge upon the committee the importance of requiring that the District of Columbia should be the actual habitat of these corporations, not in theory alone, but in actual fact. Here is where their books and their officers should be. I would not go so far as to say that the manufacturing plants themselves should be here. But they should be well within the reach of the District officials, and within reach of the processes of the court, and of every one in fact who is legally concerned in the existence of such companies.

The CHAIRMAN. The construction of this law has evidently been very different from the intention of the committee that drew it up—from the intention of the bar association of the city and of the Congress that enacted it. It was not the intention of Congress at the time to pass anything but a local law, the same as a State legislature would pass applicable to the State; and the construction given to it, as you describe, has been totally different from what was intended.

Mr. SIDDONS. I might add, for the information of the committee, that at the meeting of the bar association of the District—at its annual meeting the other night—I introduced a resolution which was unanimously adopted by the bar association with a view to submitting to the committee any changes which their legislative committee should deem necessary; and the board of trade has also taken similar action, the code committee, under Mr. A. B. Browne, having the matter under their consideration. I think the sentiment of the city is pretty unanimous in this matter, except those concerned in the incorporation companies, that a radical amendment is needed at once.

I do not want to be understood as making complaint at all about the tendency to incorporate. I think it is desirable and needed in many enterprises and I would not like to see a law made for restricting incorporations for legitimate purposes and under proper safeguards. I would not like to see them limited or restricted.

The CHAIRMAN. Are you familiar with the New York and the Wisconsin and Illinois State statutes respecting corporations?

Mr. SIDDONS. I am somewhat familiar with the New York corporation laws, Mr. Chairman, and there, I think, there are many safeguards thrown around them. The States in late years have been enacting liberal corporation laws, the States of Delaware and New Jersey particularly, although New Jersey by the process of amendment and judicial construction has now a very excellent incorporation law, though a very liberal one. I have received advertising matter from Maine to incorporate under their laws. Nevada has passed a very liberal corporation law. West Virginia has rather been restricting of late. Virginia used to be the place for the incorporation of companies in the District of Columbia, but of late they have become more strict. But of all corporation laws the most liberal and the cheapest is the law of the District of Columbia.

STATEMENT OF MR. E. W. McCORMICK.

The CHAIRMAN. Now, Mr. McCormick.

Mr. McCORMICK. Mr. Chairman and gentlemen of the committee, I quite agree with Mr. Siddons in a great many things he said, yet I disagree with him in other ways. I have incorporated a great many companies under the laws of the District. In fact, I have been making a business of it for a year and a half. When Mr. Siddons says that the corporations do not maintain offices here and that there is nobody upon whom service can be had in the event of suit, I beg to differ with him, because in every certificate I file I specify the office of our company and I also specify myself as the resident agent of that company in the District of Columbia, and I always require that I be made one of the directors of that company to remain on its board.

The CHAIRMAN. That is, you require that. The code does not?

Mr. McCORMICK. No.

The CHAIRMAN. That has nothing do with the effect of the law.

Mr. McCORMICK. I was just stating how I transacted business.

The CHAIRMAN. Your transacting business in that way does not make it obligatory upon Mr. Smith to do it that same way?

Mr. McCORMICK. No, sir; my doing it would not make it obligatory upon anybody else, but in doing that I have incorporated 400 companies in the District who have some one here to represent them.

The CHAIRMAN. How has it become possible for concerns in California and concerns here to go into the business of incorporating companies?

Mr. McCORMICK. There are companies and firms doing that business in every city in the country. I do not know anything about the business Mr. Siddons refers to in California. Of course, there are people of that kind in every State. In New York there are numbers who make it their business.

The CHAIRMAN. They are usually lawyers, called upon in a legal capacity to draw up the papers in proper form, are they not?

Mr. McCORMICK. Not necessarily. They are people who make a specialty of that business. I believe Mr. Siddons himself represents a company of that kind in Delaware—perhaps the Delaware Trust Company.

Mr. SIDDONS. I represent them in legal business.

Mr. McCORMICK. I have seen some of your literature, and I read also an address that you made somewhere—

Mr. SIDDONS. I made it in Indiana.

Mr. McCORMICK. Your company is in Delaware doing business?

Mr. SIDDONS. The Delaware Trust Company—they have incorporated under that Delaware law here in the District. I have never appeared for them anywhere, or made any addresses.

Mr. McCORMICK. It was some other company, then, I had in mind. I connected your name with the address.

I quite agree with Mr. Siddons that the Code ought to be amended. I believe the District ought to get more from each certificate than they now do.

Mr. COWHERD. When you incorporate a company here, what security is there that there is anything behind the stock?

Mr. McCORMICK. The law requires that 10 per cent shall be paid in before the company is authorized to begin business.

Mr. COWHERD. All they have to do is to make an affidavit that that 10 per cent is paid up? They simply have to file a paper showing that?

Mr. McCORMICK. There is nothing to file after the certificate of incorporation has been recorded, except their annual statement, which shows how much has been paid in.

Mr. COWHERD. That does not have to be sworn to?

Mr. McCORMICK. Yes; it has to be sworn to by the secretary of the company.

Mr. COWHERD. There is no oath required, before they begin to do business, that anything has been paid in, and no proof required of any kind?

Mr. McCORMICK. No, sir. There is also, when the stock is fully paid, a certificate that has to be filed, stating that the full amount of the capital has been paid; but until that full amount has been paid there is nothing else required after the certificate and annual report is published.

Mr. COWHERD. Is there any security to people extending credit to the company?

Mr. McCORMICK. Not that I know of. So far as concerns the statement that persons are trying to make outsiders think that their charter is granted by special act of Congress, and that it is a Federal charter, I will say I have known of several cases where the Post-Office Department has taken that up, and they are protecting outside people in that way. They will not allow outside companies to say they have obtained a Federal charter.

The CHAIRMAN. Now, let me ask you a question. I had knowledge a year or two since of a stock transaction in the State of Illinois, where parties I knew were interested. They learned that stockholders in the State of Illinois who sold stock were personally responsible for the statements of the company. In other words, if a stockholder in a company advertising a capital of half a million dollars sold you a thousand dollars' worth of stock, and later you found that the assets of the company were only half that amount, he would be responsible to you for the statement made by the company, and an action against him for the deficiency would be good, thereby protecting the purchasers of stock in regard to statements made by the president or officers of the company. I ask your opinion about that kind of a statute.

Mr. McCORMICK. I have no doubt but that cases of that kind would be decided the same way here. Courts do not uphold people going around and advertising falsehoods and making misrepresentations. I do not know of any cases decided that way here. In fact there are very few suits brought here against any kind of corporations. But if misstatements were made in prospectuses, I have no doubt they would be called to account.

The CHAIRMAN. I mean those who sold that stock. I wanted to get your idea about that, whether you thought a provision of that kind was a desirable safeguard to have.

Mr. McCORMICK. I think that would make it much safer for the investing public, Mr. Chairman. I think so, sir.

The CHAIRMAN. There would not be a very brilliant field, then, for

an incorporating company in the District after a provision of that kind had been enacted.

Mr. McCORMICK. I do not know about that. You can not tell until you see what the outside people are going to think about it. That is a matter that I could not personally answer. The laws of the District of Columbia certainly give corporations the right to incorporate for less money than anywhere else. The recent opinion of the court of appeals will restrict them to one line of business, although Mr. Dutton has been doing that himself for some time. The certificate upon which that opinion was rendered was very, very broad, and as soon as I read the certificate I saw exactly what the result was going to be. It was a direct violation of a great many provisions of the code.

I think that the cost of incorporating in the District ought to be increased, but not to the extent that these bills before Congress contemplate. In a number of the States they do an incorporating business—in New Jersey, Maine, Delaware, Arizona, Oklahoma, and Nevada. Those are all, except New Jersey and Delaware, the chief incorporating States, and you can incorporate companies for \$1. I have made a schedule of fees.

Mr. CAMPBELL. Before going into that matter, what do you think about requiring a larger paid-up capital, and a specific showing that that capital has been paid in, before the company is permitted to begin its business?

Mr. McCORMICK. I do not know that I would increase the 10 per cent, although I think it would be well to make them file a statement or affidavit to the effect that 10 per cent has been paid.

Mr. CAMPBELL. In the 400 companies you have incorporated have you any idea as to how many of them have paid 10 per cent?

Mr. McCORMICK. To my personal knowledge 50 per cent of the 400 did not go any further than the filing of a certificate. They simply took out their charter and their stocks.

Mr. CAMPBELL. That cost them a small attorney's fee, and a very trifling fee for recording here?

Mr. McCORMICK. Yes.

Mr. CAMPBELL. So that a company can be recorded here for \$50, with a capitalization of \$100,000,000, and begin doing business without paying up \$1 of capital stock?

Mr. McCORMICK. Yes; but legally they could not begin business without paying 10 per cent.

Mr. CAMPBELL. The snap is so easy—

Mr. McCORMICK. The competition is so sharp that you can get it for \$10.

Mr. GOOCH. Has not that 10 per cent been represented time and time again as franchises?

Mr. McCORMICK. I have no doubt it has been.

Mr. GOOCH. And the 10 per cent has never been paid in at all?

Mr. McCORMICK. Yes; as goods sold and things of that kind.

Mr. GOOCH. Ought not the 10 per cent be paid in cash?

Mr. McCORMICK. I think a provision ought to be put in requiring them to pay 10 per cent at its intrinsic value. The provision in the code now is rather loosely drawn.

Mr. SIDDONS. It says either in money or in property at its actual value.

Mr. GOOCH. It says at its actual value?

Mr. SIDDONS. Yes.

Mr. McCORMICK. Nobody but the directors can know or tell the actual value. I think it is loose at the present time. It might be real or personal property. There was a bill in the Senate last year upon which we were heard, and Senator Martin, of Virginia, stated at that time that he thought the companies ought to be required to pay an annual tax in addition to the recording fees, and he suggested \$5 or \$10. I believe Mr. Dutton has made some recommendation of that kind, has he not, Mr. Dancy, this year?

Mr. DANCY. I think so.

Mr. McCORMICK. Now, if the company fails to publish its statement as required by law, there is no penalty whatever attached to the failure, and the District does not get enough out of it. But these bills that are now before this committee make the price so high that with only one line of business allowed to be transacted under this charter it would make it prohibitive in the District of Columbia, not only for local corporations, but for any others that wanted to come in. I do not know that it is worth while to go over all these figures, but you can incorporate a \$100,000 company in New York for \$50. In Oklahoma it costs you \$10. In South Dakota it costs you \$15. In Idaho it is only \$15.

Mr. SMITH. How much is it in the District of Columbia?

Mr. McCORMICK. In the District of Columbia it would cost \$1.25. I think each one of our charters, if they were averaged with each certificate granted, would be found to cost about \$2 or \$2.50.

The CHAIRMAN. Have you the figures for Wisconsin there?

Mr. McCORMICK. No; it is a rather expensive State. I have New Jersey, Pennsylvania, Delaware, South Dakota, Washington, Idaho, Arizona, Maine, and Vermont. That was at Senator Gallinger's request—Vermont.

Mr. GOOCH. You speak of West Virginia. Do they not pay an annual tax?

Mr. McCORMICK. Yes.

Mr. GOOCH. Will you please state what it is?

Mr. McCORMICK. What size of company?

Mr. GOOCH. Say a \$100,000 company.

Mr. McCORMICK. It is \$50.

Mr. GOOCH. That is to be filed and paid every year with the statement of the company?

Mr. McCORMICK. Yes; and a million-dollar company would cost them \$410.

Mr. WILEY. What is it in the State of New Jersey?

Mr. McCORMICK. In New Jersey it is \$25. For a million dollars it would be \$200.

The CHAIRMAN. In New Jersey the rate is 20 cents on every \$1,000, and the minimum fee is \$20. In Wisconsin the incorporation fee is \$10 for filing articles of incorporation of beet sugar manufacturing companies and corporations manufacturing dairy productions. For other corporations, where the capital stock is \$25,000 or less, the fee is \$25, and for each additional \$1,000, \$1. According to that the fee would be \$100.

But that is not the point at all, as to the fees. That is merely incidental. The law in Wisconsin requires that before any stock shall be issued it shall be fully paid, 100 cents on the dollar. I think the

Illinois law is practically the same. The Wisconsin statute, or the Wisconsin Code, was taken from the New York Code, I believe.

Mr. McCORMICK. I think the District Code could be improved upon in many ways. I do not think the increase in taxation would remedy the defects altogether. I think the way to get at it is to take the whole of Subchapter IV and go over and revise it.

The CHAIRMAN. In other words, to repeal it and put in a new section in its place?

Mr. McCORMICK. That would be the easier way to do it.

The CHAIRMAN. Now, Mr. Garfield, the committee will be glad to hear from you, with any suggestions you may have to present. There is certainly no one who has a greater interest in the corporation laws of the District of Columbia than the Bureau which you represent.

STATEMENT OF MR. JAMES R. GARFIELD, COMMISSIONER OF CORPORATIONS, DEPARTMENT OF COMMERCE AND LABOR.

Mr. GARFIELD. I thank you. We certainly have some interest in the subject..

I desire to say, primarily, to the committee here, that the study that we have been making during the year has given to the Bureau an opportunity to study the corporation laws of the various States, and had I known the scope of your inquiry this morning in this hearing I would have brought here the tabulated results of what is required under the State statutes of all corporations, at the time they make their requests for charters and thereafter in their annual statements. If the committee desire I think I can send directly to the chairman a copy that we have in the office of a comparative statement showing what is required in the other States.

The CHAIRMAN. I will state that there appears in the Senate report on a similar bill the requirements, so far as the fees go, but not the law.

Mr. GARFIELD. But not the law. The principal thing that has attracted me in connection with the District law is this, that it has failed to recognize the needs of the people who really require some form of protection and some form of publicity in connection with corporations.

As has been said, the District law is a liberal law of incorporation, and whatever its intention may have been, or the intention of its framers, the effect has been wholly one on the corporation side, giving an easy method for the granting of charters, which have been used practically before the public in many instances as Federal charters. Of course that is not the intention, and that was not the intention, and the law did not so provide; but publicly the impression prevails that the corporations organized under the District Code are Federal, and in some way they have greater jurisdiction and greater powers than those conferred by the State. This is erroneous, of course; but the impression so obtains, and we are in constant receipt of letters making inquiry regarding the so-called Federal companies.

The reason for this, I believe, is that the law as it now stands has failed, as I indicated at the beginning, to recognize what ought to have been included in such a law as this. We have found in our study of the various State laws, and the actions under them, and the difficulties in connection with their administration, that the great difficulties have been from the lack of accurate knowledge regarding the organization

of the corporation itself. That is, a set of men desire to begin a certain kind of business. They go to the State where they can get their charter the most readily. They give no statement of what their business is, or what their property is, or how they are going to conduct it, or what they intend to do with the charter when it is granted. Therefore there is an opportunity instantly for the individuals who seek to impose either a fraud or a wild-cat scheme on the public—there is an opportunity for that kind of scheme. Therefore, fundamentally, the law fails to provide the method by which that can be prevented.

That can be prevented, however, by requiring the organizer or promoter of any corporation to state definitely by affidavit the purpose of their corporation, the property they intend to turn over to that corporation, either by way of good will, stock, or machinery, or of money, and set opposite each item its value, and to indicate where they intend to operate and what they intend to do—not in general terms, but in specific terms. In other words, when the promoters of the organization see fit to come to the District, or to any State, for the great right of incorporation they should make clear to the State, and through the State to the people, all those essential facts, because they are getting something which the individual has not, because they are getting rights that the individual can not obtain, and they are exercising power that the individual can not exercise, and therefore there should be, primarily, a full disclosure of their proposed business and the value of the property that is to be turned in. In that particular there is, to my mind, a very fatal weakness in the District Code.

Then, secondarily, there has been no proper provision for an annual return from a corporation to the authorities of the business conducted and the methods of conducting that business. Now we must recognize, of course, that the Government must not interfere with the right of privacy in the conduct of individual business, whether it be by individuals or be a partnership or by corporations. But there are certain things that are not invasions on the right of privacy, and those facts should be returned annually to the public authorities, so that the public authorities may report to Congress how the creatures of Congress are conducting themselves under the powers granted them by these charters.

There is nothing in the existing law under which there can be compelled such a return. Exactly what the details of that return ought to be, should be determined by the character of business done. In regard to banks, it is necessary in the annual statement to show the solidity of the corporation and the integrity of its management. In business corporations certain other things should be required than those which appear in the bank statement, and in some of the State laws those have already been provided for. But by reason of the lack of such laws in other States, naturally the incorporators do not go where these provisions are required, and it seems to me, in the consideration of the amendment of the District Code, that Congress could do a great service to the people of this entire country by providing an incorporation law which would meet the business conditions that obtain to-day, and not simply afford a machine for turning out corporations, as has been done under the existing law.

Then as to the question of taxation—

The CHAIRMAN. Before you leave that other topic, Mr. Garfield, I would like to ask a question or two, so that you could give the com

mittee your opinion and judgment. In the first place, Congress has endeavored in the past, in enacting different kinds and classes of District of Columbia legislation, to have it as nearly perfect as can be, in order that it may be a pattern, or model, for the States to follow. There are certain kinds of legislation which I might mention, where, I think, the best ideal was reached. In the passage of this code, which was before Congress some twenty-five or thirty years, it was so long in its details that it was largely left to the bar association, or to a code committee of the bar association, which drew the measure, and owing to its length it was practically impossible for the House or for a committee of Congress to give to the subject that careful and long consideration that was desirable.

The opinion was, inasmuch as the proposed code was generally approved by the bar and by the courts, that it should be passed and then after its passage Congress could take up such questions as this, from time to time, and endeavor to remedy the defects in its provisions. Would it not be desirable, now, to have drafted a bill and make it as nearly perfect as possible, in line with the present public opinion on this question, and with the various safeguards that you suggest, so that we could have a law here in the District of Columbia that could be referred to as a standard on this subject? And would it not be better for us to suspend the operation of this present law by resolution, during the preparation of a bill of that kind, and go back to the old practice requiring each corporation coming here to get separate and individual charters from Congress until a new law could be enacted?

Mr. GARFIELD. I think, Mr. Chairman, that the suggestion is an eminently wise one, for the reason that a continuance of the law as it is at present simply leads to a still greater number of corporations under the existing conditions, and they are certainly not satisfactory. And if Congress, through this committee here, will take up the preparation of a measure along the line we now recognize as being the correct line for the organization of corporations, you can prepare here and enact a law that would be a standard, and you can do it in the light of all we know of existing corporate conditions; and in the meanwhile the suggestion that the law should be suspended seems to be a wise one.

Of course, existing rights obtained during the time of its operation should not be lost, or should not be affected, and could not be. But at this session or at the next session, it seems to me, you ought to be able to formulate a measure that would meet the best thought on the subject of corporations.

The CHAIRMAN. It can not be done hurriedly?

Mr. GARFIELD. No; it ought not to be done hurriedly. It is fraught with too much difficulty and affects too many interests to take merely the statement of a few individuals. You should compare the existing legislation of the various States, and collect from those not only the laws that theoretically seem good, but the laws that have shown by practical operation that they bring good results and can be enforced. We have a good many statutes that are admirable in themselves, but their practical enforcement has been impossible, and such laws as that ought not, of course, to be followed.

The CHAIRMAN. It would seem to me that the charters issued by the District here, instead of being a cloud upon the character of a business or corporation, ought to be a credit, so that corporations organized in

the District of Columbia would carry by their very charters a guaranty of good faith, and inspire the confidence of the public by the knowledge that the laws here on this subject were equitable and just.

Mr. GARFIELD. Yes.

Mr. SIMS. I suggest, Mr. Chairman, that this chapter on corporations was not acceptable to the committee at the time the code was enacted, but it looked as if it was impossible to get the code through otherwise. It is just as you say; it was so great that it had to be referred to others.

The CHAIRMAN. It was either that or nothing.

Mr. GARFIELD. I quite agree with you. I know from my own brief legislative experience in the State of Ohio how necessary it was to include things of that kind, and later on we could come to a conclusion as to what amendments ought to be made.

Now, if the committee desire, I will speak of these taxation features of the special bills, but not unless you desire that I should refer to them.

The CHAIRMAN. I regard that matter of taxation as the smallest or least important question. I am sure this committee will not allow any bill to go through that will not provide a proper and ample revenue.

Mr. SIMS. Mr. Chairman, I would be glad to have Mr. Garfield express his views as to whether or not it would be best to tax the gross receipts on the corporations. Some people advocate the taxation of the gross receipts and others the taxation of the capital stock. If the committee will hear him on that subject I will be glad to learn of the best theory.

The CHAIRMAN. That is a subject that has given Congress a great deal of trouble.

Mr. GARFIELD. That is practically an expression of individual opinion from the experience which the man expressing the opinion may have had. As the court often does, I shall probably take a middle course in answer to your question, because I believe that a combination of the two systems results in greater benefit to the State and greater justice to the corporation.

The tangible property of a corporation, namely, its real estate and machinery and fixtures, should be subject to regular rates of taxation that are imposed upon property of a similar character owned by individuals or by firms. That is, the value the corporation has in its franchise, if it be a foreign corporation, or in its good will, if it is a private corporation; and that is not capable of definite valuation by any board of appraisers. The next approximation to valuation would be the current market price of its stock; but that in many instances is impossible, because in the case of many corporations their stock is not generally on the market, and its value is not generally known, and therefore the tax upon gross receipts, such as you suggest, is not only a reasonable method, but is the most feasible method of determining its valuation. In connection with that should be considered the net receipts as well. But an attempt to put a value upon the net receipts is very dangerous, for the reason that the charges against the gross receipts are then left in the discretion of the corporation, and the net receipts may be reduced to a minimum by the showing of the books; and therefore the gross receipts is the fairest basis for the determination of the original earning power of the property of the corporation.

I have always believed that the taxation of the gross receipts is a fair method of taxing a corporation, levying in addition to that the tax on its franchise and on its tangible property—its fixtures and property.

There is a manufacturing tax also that is applicable to the property of a manufacturing corporation in the various stages of its manufacture, namely, the iron ore, the manufactured stock on hand in its incomplete stage, and the stock on hand when fully completed. The injustice of that form of tax, although it may be averaged during the year, as we have it in Ohio, is that it is practically a double or even a triple taxation on the same property in different stages of its manufacture or development, and for that reason it is not a fair tax, or, while it may be fair in most instances, it imposes an unjust burden on the property.

Mr. SIMS. I am personally inclined to favor the taxation of gross receipts. I think that is the best method, although we have not got to that so far.

Mr. GARFIELD. In making reports to Government officials you are instantly able to determine the business of the corporation, and can detect any fraud or misstatement that may be made by the officers of the concern. With that gross receipt statement must be coupled the right of the duly authorized officers to make investigation and inquire into the honesty of that return.

Mr. COWHERD. Mr. Chairman, in regard to this bill, your proposition is to repeal the present law in that chapter, and in the meantime let the matter stand over until the bill can be perfected. I understand that is your proposition. I make this suggestion: When we go to repeal that chapter we might meet with considerable opposition in some quarters. If the matter was referred to Mr. Garfield, would it not be possible to get a measure framed in time to go through this session?

The CHAIRMAN. How long would that take, Mr. Garfield?

Mr. GARFIELD. I would very much hesitate, Mr. Chairman, to agree to be able to report a bill that would be even satisfactory to myself in a short time. I can prepare a bill, yes; but to prepare a measure that would be satisfactory and meet the objections that exist at the present state of affairs, I should judge I could not do it in a hurried way. It should not be the result of any one man's thought. It should be the result of the thought of men who are practically engaged in this work, as well as the theoretical side of the man at his desk.

The CHAIRMAN. I understand, for the information of the committee, that there is a proposition pending before another committee of the House looking to the same end. I refer to the Committee on Appropriations.

Mr. COWHERD. That is for the repeal?

The CHAIRMAN. Yes.

Mr. COWHERD. I think, then, we ought to do it ourselves, and not let them taunt us with dereliction of duty.

The CHAIRMAN. I think the information we have obtained this morning would warrant us in giving the matter prompt consideration. I do not know that it would be practicable, but at the same time it seems to me that an incorporation law, as nearly ideal as possible, would be very desirable for the District of Columbia.

Mr. SIDDON. May I make a suggestion in regard to the chairman's suggestion as to the suspension of Subchapter IV? That would leave

the District without any corporation law at all for private purposes, and if the committee should amend that suggestion by reverting to the law we had for over thirty years—the one we had prior to the existing one—there would be no danger in that, and it would be only a temporary makeshift until the committee would be able to prepare a bill. But if you repeal the chapter outright or without reverting to the old law, you will leave the District without any corporation law at all.

Mr. CAMPBELL. If Subchapter IV was repealed, that would have the effect of reviving the old law?

Mr. SIDDONS. The general incorporation law deals with quite a number of specific kinds of incorporation, and Subchapter IV deals with mining and other companies. If the change was made, people would be allowed to incorporate for anything whatever, with the few exceptions noted.

Gentlemen, if you determine to suspend this law, we ought to have something temporarily, and I recommend that we go back to the old law under which the District operated for thirty or thirty-five years. Under that law people who wished to conduct a legitimate incorporated business were driven into Virginia, West Virginia, and New Jersey for incorporation; but we ought to have something, and there would be no danger at all if we went back to the law that was in existence prior to the adoption of the present code.

Mr. GARFIELD. In answer, Mr. Chairman, to your other question, of course I wish the committee to understand that it would be my desire to afford every possible information that we have there at the Bureau in connection with this matter, and, if it is desirable, even for purposes of discussion, I will do my best to prepare an outline measure that would meet many of the objections that exist and which would contain the best features of the various laws of the States, and submit that informally to the committee for its consideration, and with a reference to the various State laws from which features might be taken and the results under those State laws in the administration of these special features.

The CHAIRMAN. I am sure the committee will appreciate, Mr. Garfield, any information or suggestion you can make in that respect. I understand you to say [addressing Mr. Siddons] that the bar here, or the bar association, has appointed a committee to take up the subject?

Mr. SIDDONS. Yes; the legislative committee of the bar association will, I hope, take up the matter.

Mr. GARFIELD. In conclusion, gentlemen, I have here a reference to the existing bills, and I felt from my study of these that they would not meet in any particular the requirements of the case. The action suggested by the committee is certainly the only wise and proper one.

STATEMENT OF MR. JOHN C. DANCY, RECORDER OF DEEDS, DISTRICT OF COLUMBIA.

Mr. DANCY. Mr. Chairman and gentlemen, I am recorder of deeds of the District, and it is through us largely that this matter has attracted the attention which it has received in the District. If you will remember, we called your attention last winter to this incorporation act, and how it worked on the recorder of deeds. We wanted some action to be taken then, taking advantage of the discussion then going on.

The past year has witnessed an increase of more than 700 corporations in the District over the year previous, 1903. There were 400 companies incorporated in the past year, with a capitalization of \$400,000,000 and more. Of these, 38 were for more than \$10,000,000. One of them aggregated \$120,000,000, and 8 of them \$100,000,000. The total amount of the incorporations of the past year has been \$1,541,901,300, the total capitalization for the two years being \$3,582,861,300. For the privilege of incorporating these 2,211 companies under the laws of the District of Columbia the incorporators paid the District an average of \$1 for each concern, or in round numbers \$2,200.

The companies, or a number of them at least, insisted for a time that they could do any number of businesses. For instance, we counted up in one case where one company wanted to do 10 different kinds of business. We objected to it, and insisted that they had not the right to do but one kind of business. They insisted that they were right, and that the incorporation law allowed them to do any kind of business they wanted. They objected and took the case to court. The court sustained us by deciding that while we could not exercise judicial authority, we certainly could exercise the right of discretion. I have not the slightest doubt that but for that the amount received for registering these corporations would have been less than \$1,000.

And then we have no power or privilege at all to pass upon the right of incorporation, and nobody else has, and nobody knows how much money they pay in. The law did not require it. They might say they had \$10,000,000, and yet they may not have paid \$1,000.

However, that was not a matter that affected us particularly. The thing that has concerned us chiefly, as we pointed out, has been the receipts derived to the District of Columbia. A part of our fees, of course, go to the District of Columbia. We thought it wise that something should be done. We prepared a measure which met our view of the case, and we submitted it to the attorney for the District of Columbia to get his judgment with reference to it, and this is the result of their recommendation [reading]:

That section five hundred and fifty-two of the Code of Law for the District of Columbia is hereby amended by adding thereto the following: "In addition to the fees herein required, all corporations hereafter incorporated in the District of Columbia shall pay to the collector of taxes for the District of Columbia, as a condition precedent to the filing and recording of the certificate of incorporation in the office of the recorder of deeds, forty cents on each and every one thousand dollars of the capital stock of the corporation, as set forth in its said certificate, where the said capital stock does not exceed one hundred thousand dollars, and ten cents on each and every one thousand dollars in excess of one hundred thousand dollars: *Provided, however,* That the fee so paid shall in no case be less than ten dollars, out of which said fee the District of Columbia shall pay to the recorder of deeds the fee authorized for filing and recording said certificate: *And provided, further,* That every corporation incorporated under the provisions of Subchapter four of Chapter eighteen of said Code of Law shall hereafter, not later than December 31 of each year, pay to the collector of taxes of the District of Columbia a fee of ten dollars, and that upon default in said payment said corporation shall then and thereupon cease to exist as a body politic and corporate."

We think that after mature consideration of the matter, and after conference with both sides—the corporations and other people in interest, and with the citizens of the District—that it would not be fair to make the law too drastic, but that it should be made reasonable, so that corporations who want to do business in the District of

Columbia and want to get their incorporation papers here can do so at a reasonable rate. And the measure suggested is about as liberal as any of the laws we have consulted of several States. We have consulted the laws of the different States, and we find this about the same. I think New Jersey and Virginia have laws substantially like this. And it would afford better remuneration for the District of Columbia. The recorder of deeds office would be satisfied, and the District of Columbia would enjoy every advantage from it.

I do not know whether this copy was sent to you or not. I will leave it, however, for your consideration.

Mr. SMITH. What part of the fees of your office are turned over to the District of Columbia?

Mr. DANCY. All in excess of the salaries of the copyists and clerks of the recorder of deeds' office. Whatever excess there is goes into the Treasury Department for the benefit of the District of Columbia. Last year there was about \$3,000 turned over to the District of Columbia.

Mr. SMITH. Turned over?

Mr. DANCY. Yes, turned over to the Treasury Department for the use of the District of Columbia. I have here a statement of the capitalization of companies incorporated during the year ending December 31, 1904. I will leave it with you.

The CHAIRMAN. Gentlemen, it is now 12 o'clock, and accordingly the committee will stand adjourned.

Thereupon, at 12 o'clock noon, the committee adjourned.

Memoranda submitted by Mr. John C. Dancy, recorder of deeds.

COMPANIES INCORPORATED DURING THE YEAR ENDED DECEMBER 31, 1904, FOR GAIN,
UNDER SUBCHAPTER 4, CHAPTER 18, OF THE DISTRICT CODE.

2 at \$100	\$200
1 at \$200	200
1 at \$250	250
1 at \$300	300
2 at \$500	1,000
11 at \$1,000	11,000
1 at \$1,200	1,200
1 at \$1,500	1,500
9 at \$2,000	18,000
1 at \$2,500	2,500
8 at \$3,000	24,000
2 at \$4,000	8,000
28 at \$5,000	140,000
1 at \$5,400	5,400
6 at \$6,000	36,000
2 at \$8,000	16,000
62 at \$10,000	620,000
3 at \$12,000	36,000
19 at \$15,000	285,000
1 at \$18,000	18,000
31 at \$20,000	620,000
76 at \$25,000	1,900,000
17 at \$30,000	510,000
4 at \$35,000	140,000
2 at \$36,000	72,000
3 at \$40,000	120,000
1 at \$43,000	43,000

1 at \$45,000	\$45,000
122 at \$50,000	6,100,000
1 at \$55,000	55,000
9 at \$60,000	540,000
1 at \$65,000	65,000
14 at \$75,000	1,050,000
1 at \$88,000	88,000
263 at \$100,000	26,300,000
2 at \$110,000	220,000
1 at \$115,000	115,000
1 at \$120,000	120,000
9 at \$125,000	1,125,000
46 at \$150,000	6,900,000
1 at \$150,200	150,200
1 at \$165,000	165,000
84 at \$200,000	17,200,000
2 at \$225,000	450,000
75 at \$250,000	18,750,000
51 at \$300,000	15,300,000
1 at \$325,000	325,000
3 at \$350,000	1,050,000
2 at \$360,000	720,000
5 at \$400,000	2,000,000
171 at \$500,000	85,500,000
10 at \$600,000	6,000,000
1 at \$650,000	650,000
2 at \$700,000	1,400,000
16 at \$750,000	7,950,000
1 at \$850,000	850,000
1 at \$900,000	900,000
228 at \$1,000,000	228,000,000
1 at \$1,050,000	1,050,000
1 at \$1,200,000	1,200,000
1 at \$1,250,000	1,250,000
26 at \$1,500,000	39,000,000
1 at \$1,750,000	1,750,000
32 at \$2,000,000	64,000,000
10 at \$2,500,000	25,000,000
14 at \$3,000,000	42,000,000
1 at \$3,110,000	3,110,000
36 at \$5,000,000	180,000,000
1 at \$6,000,000	6,000,000
2 at \$7,500,000	15,000,000
1 at \$8,000,000	8,000,000
1 at \$9,500,000	9,500,000
17 at \$10,000,000	170,000,000
3 at \$15,000,000	45,000,000
3 at \$20,000,000	60,000,000
4 at \$25,000,000	100,000,000
1 at \$30,000,000	30,000,000
1 at \$80,000,000	80,000,000
8 at \$100,000,000	800,000,000
1 at \$120,000,000	120,000,000
1,491	2,041,960,000

During the year ended December 31, 1904, there were filed in the office of the recorder of deeds, District of Columbia, 1,491 certificates of incorporation under subchapter 4 of chapter 18 of the District Code, the total capitalization of these 1,491 companies organized for gain reaching the enormous sum of \$2,040,960,000. As compared with the year ended December 31, 1903, this was an increase in the number of such concerns incorporated here of 772 and an increase in the total capitalization of the companies of half a billion dollars, the capitalization of the 720 companies incorporated during 1903 for gain being \$1,541,901,300, the total capitalization for the two years being \$3,582,861,300. For the privilege of incorporating these 2,211 companies under the laws of the District of Columbia the incorporators paid the District an average of \$1 for each concern, or, in round numbers, \$2,200.

Suggestions of the recorder of deeds.

FEBRUARY 11, 1904.

HON. JOSEPH W. BABCOCK,

Chairman Committee on District of Columbia, House of Representatives.

DEAR SIR: In the matter of the bill introduced the 3d instant by Representative Morrell to amend the Code of the District of Columbia regarding corporations, may I be permitted to suggest the following amendments. These amendments, I should explain, are merely for the purpose of securing the enactment of legislation on the subject which will be satisfactory to all concerned. The Morrell bill, if it should become law, would, I fear, drive from the District all concerns seeking incorporation here, and that, I feel sure, is not the intention of Representative Morrell or of your committee. The amendments suggested herein are intended to encourage the incorporation in the District of legitimate business concerns, and through their incorporation to secure to the District fair and reasonable revenue. The amendments, however, in the form submitted are merely suggestions, and are as follows:

Make section 2 read:

"SEC. 2. That the certificate of an intended corporation shall be subscribed to by not less than three natural persons, at least one of whom shall be a bona fide resident of the District of Columbia, and said certificate shall state—

"First. The name of the proposed corporation.

"Second. The purpose for which it is proposed to be formed: *Provided, however,* That no corporation organized under the provisions of the Code of the District of Columbia shall be authorized to engage in more than one line of business.

"Third. The place or places where its business is to be transacted, including the post-office address of said corporation in the District of Columbia.

"Fourth. The term for which it is to exist.

"Fifth. The number of its directors or trustees, and the names and post-office addresses of those chosen directors or trustees for the first year.

"The amount of its capital stock, if any, and the number and par value of shares into which it is divided."

Amend section 3 by making it read as follows:

"SEC. 3. That the certificate provided for in section two shall be filed in the office of the recorder of deeds of the District of Columbia and recorded therein: *Provided,* That said recorder of deeds shall upon the filing of said certificate furnish the incorporators a charter in such form as the corporation counsel of the District of Columbia shall prescribe, which charter shall before delivery to the incorporators be recorded in the office of said recorder of deeds."

Amend section 5 by making it read as follows:

"That section five hundred and fifty-two of the Code of the District of Columbia is hereby amended by adding thereto the following:

"'In addition to the fees herein required all corporations hereafter incorporated in the said District under and pursuant to the provisions of subchapter four of chapter eighteen of said code shall pay to the recorder of deeds of said District at the time of filing of the certificate of incorporation one twenty-fifth of one per cent or forty cents on each one thousand dollars of the stated capital stock of the corporation: *Provided, however,* That said filing fee shall not in any instance be less than ten dollars: *And provided further,* That from and after the approval of this act no copy of any instrument recorded in the office of the recorder of deeds of the District of Columbia shall be furnished by the recorder unless the fee therefor shall have been paid at the time of ordering said copy.'"

When the bill is taken up by your committee, I should be glad to appear and give the committee any further information on the subject we may have.

Very respectfully,

JNO. C. DANCY,

*Recorder of Deeds District of Columbia.**Report of Commissioners of the District of Columbia on H. R. 11811.*

MARCH 7, 1904.

HON. J. W. BABCOCK,

Chairman Committee on the District of Columbia, House of Representatives.

DEAR SIR: The Commissioners of the District of Columbia have the honor to make the following partial response to your reference to them for their examination and report of bill H. R. 11811, "To amend the Code of the District of Columbia regarding corporations."

They have only considered the portion of the bill which relates to the subject of fees to be paid by corporations organized under the laws of the District. They have prepared, and invite attention to the inclosed draft of a bill entitled "A bill to amend section 552 of the Code of Law for the District of Columbia," which proposes to fix the fees in question, as a separate bill in lieu of the section containing the proposed provisions on this subject in the bill you referred to them, and recommend its early enactment.

The remaining sections of the bill relate to proposed changes of the general law of incorporation in the District, respecting which the Commissioners desire the suggestions of the bar association of the District of Columbia, and which they have accordingly transmitted to that association with request for an early statement of its views thereon.

Very respectfully,

HENRY B. F. MACFARLAND,
President Board of Commissioners of District of Columbia.

A BILL to amend section five hundred fifty-two of the Code of Law for the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section five hundred fifty-two of the Code of Law for the District of Columbia is hereby amended by adding thereto the following: "In addition to the fees herein required, all corporations hereafter incorporated in the District of Columbia shall pay to the recorder of deeds at the time of the filing of the certificate of incorporation forty cents on each thousand dollars of the amount of the capital stock of the corporation as set forth in its said certificate: *Provided, however,* That the fee so paid shall not be less than ten dollars: *And provided further,* That hereafter all corporations, except such as are exempt from taxation under existing law, shall pay an annual tax, in lieu of all personal taxes, of one-twentieth of one per centum on the capital stock actually paid in up to and including three million dollars; one-fortieth of one per centum on the capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, and thirty dollars on each million dollars of capital stock issued and outstanding in excess of five million dollars; and said tax shall be collected at the time and in the manner provided for the collection of personal taxes in the District of Columbia.

"All corporations organized under the laws of the District of Columbia or by special act of Congress shall, on or before the first day of July in each year, file with the assessor of the District of Columbia an annual report, which shall state the location of its principal offices in the District, the name of its officers, the amount of its authorized capital, the amount actually paid in, and the tax annually due thereon.

"Nothing herein contained shall be held to alter or repeal paragraphs four, five, six, seven, and nine of section six of the act of July first, nineteen hundred and two."

[Senate Report No. 2624, Fifty-eighth Congress, second session.]

The Committee on the District of Columbia, to whom was referred the bill (S. 4848) amending section 552 of the Code of Law for the District of Columbia relating to corporations, have considered the same and it is reported back with the recommendation that it pass.

In considering the bill the committee made a careful examination of a digest of the corporation laws of all the States and Territories, furnished by the Bureau of Corporations. The provisions of these laws differ so widely that it is difficult to find a general average of the corporation fees, etc., that is entirely satisfactory. Your committee, however, made a computation to ascertain the average incorporation fee upon a capital stock of \$50,000, and found that the average rate on this amount, all expenses included, was \$39.70 for all the States and Territories, while the rate provided by this bill is \$20 on the same amount. While the bill was under consideration hearings were granted to several gentlemen representing corporate interests opposed to the bill, but they presented no reasons which seemed sufficient to the committee to warrant the reduction of the rates named in the proposed measure.

The annual franchise tax provided by the bill is practically the same as has been adopted by several other States, and in the opinion of the committee it is in no way excessive.

The bill was drawn by the Commissioners of the District of Columbia and transmitted to the committee with the following letter:

OFFICE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, March 7, 1904.

DEAR SIR: The Commissioners of the District of Columbia have the honor to transmit herewith a draft of a bill entitled "A bill to amend section 552 of the Code of Law for the District of Columbia," the object of which is to establish a rate of fees for filing articles of incorporation under the chapter of the District Code relating to incorporations.

The present charges for this service are so inconsiderable that the revenue derived therefrom is not commensurate with the advantages to the incorporators.

Very respectfully,

HENRY B. F. MACFARLAND,
President Board of Commissioners District of Columbia.

HON. J. H. GALLINGER,
Chairman Committee on the District of Columbia, United States Senate.

In considering this bill the committee submitted it to the Secretary of Commerce and Labor for examination by the Bureau of Corporations, with the request for information concerning corporation laws of the various States. A letter from the Secretary, accompanied by a comprehensive statement compiled by the Bureau of Corporations, is appended hereto.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, April 7, 1904.

DEAR SIR: I have your letter of April 5, inclosing copies of Senate bill 4848, to amend section 552 of the District Code relating to corporations, letter of David E. Anthony and his proposed amendments to this bill, all of which are returned herewith.

As to the question of the rates of taxation, I send you a comparative statement prepared in the Bureau of Corporations which shows the rates for incorporation and the annual taxes in all the States of the Union. From this it will be seen that the taxes proposed in the original Senate bill 4848 are much more nearly in accord with the legislation in the principal States than those proposed by the Anthony amendment.

The second section of the bill, which requires the filing of an annual report with the assessor of the District, is in accord with the best State corporation laws. It affords information to which such public officers are entitled.

I can not offer any suggestion as to the last proviso of Mr. Anthony's proposed amendment, referring to the annual tax upon personal property, for the reason that the Department has no information upon the question of local taxation within the District.

Very truly, yours,

GEO. B. CORTELYOU, *Secretary.*

HON. W. P. DILLINGHAM,
United States Senate.

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF CORPORATIONS,
Washington, April 7, 1904.

The following statement relates to the fee and franchise tax paid by the ordinary industrial or manufacturing company. The incorporation fee is variously named in the different States as a "bonus tax," "privilege tax," "organization tax," and "charter fee." In the following statement or table no effort is made to include all the clerical recording fees that are paid to the register of deeds and other officials provided for by the different statutes. The amount given under the head of "incorporation fee" will be found to include practically all the fees necessary to be paid upon incorporation, with the exception of nominal recording fees, paid to the register of deeds of the county where the corporation is located or has its principal place of business, when the statute requires the articles to be recorded in such county.

The words "annual franchise tax" refer to a tax paid annually to the State for the privilege of exercising the powers conferred by incorporation. Many of the States, not mentioned below as having a franchise tax, tax the corporate franchise and privileges as property.

Comparative statement of license tax or incorporation fees and the annual franchise tax required to be paid by domestic corporations in the States and Territories of the United States.

State or Territory.	Incorporation fee.	Annual State franchise tax.
Alabama	For authorized capital stock up to \$50,000, \$25; over \$50,000 and not over \$100,000, \$50; over \$100,000 but not over \$250,000, \$75; over \$250,000 but not over \$500,000, \$100; over \$500,000 but not over \$1,000,000, \$200; over \$1,000,000, \$250. (Civil Code, sec. 1281.)	On paid up capital stock up to \$10,000, \$10; over \$10,000 but not over \$25,000, \$15; over \$25,000 but not over \$50,000, \$25; over \$50,000 but not over \$100,000, \$50; over \$100,000 but not over \$200,000, \$75; over \$200,000 but not over \$300,000, \$125; over \$300,000 but not over \$400,000, \$170; over \$400,000 but not over \$500,000, \$200; over \$500,000 but not over \$1,000,000, \$300; over \$1,000,000, \$500. (Laws, 1901, p. 2616.)
Arkansas	For filing articles of incorporation, \$25; \$10 for amendment. (Stat., sec. 3299.)	No franchise tax.
Arizona	For filing articles of incorporation, \$10; filing affidavit of publication, \$3; for certificate of filing, \$3. (Session Laws, 1903, act 29, sec. 3.)	Do.
California	On capital stock of \$25,000 or less, \$15; over \$25,000 and not over \$75,000, \$25; \$75,000 and not over \$200,000, \$50; \$200,000 and not over \$500,000, \$75; \$500,000 and not over \$1,000,000, \$100; for each additional \$500,000 or fraction thereof over \$1,000,000, \$50; for issuing certificate, \$3. (S. L., 1903, p. 24, sec. 4.)	No annual franchise tax.
Colorado	On capital stock of \$50,000 or under, \$20; 20 cents for each \$1,000 in excess of \$50,000. (Laws of 1901, p. 52, sec. 1.)	2 cents on each \$1,000 of total authorized capital stock, providing capital stock is over \$25,000; maximum fee, \$1,000. (Laws, 1902, p. 3, sec. 64.)
Connecticut	On each \$1,000 of the authorized capital stock up to \$5,000,000, 50 cents, and for each \$1,000 in excess of \$5,000,000, 10 cents. (Public Acts, 1903, p. 194, sec. 57.)	No franchise tax.
Delaware	For each \$1,000 of authorized capital stock, 15 cents; minimum fee, \$20. (Laws, 1903, p. 394, sec. 129.)	Annual franchise tax one-twentieth of 1 per cent on paid-in capital stock up to \$3,000,000, one-fortieth of 1 per cent on capital stock issued and outstanding over \$3,000,000 but not over \$5,000,000; on each \$1,000,000 issued and outstanding over \$5,000,000, \$30. (Laws, 1901, p. 15, sec. 4.)
District of Columbia ..	Nominal recording fee of 15 cents per 100 words. (Code, 1902, sec. 552.)	No franchise tax.
Florida	One-fifth of 1 per cent on authorized capital stock; minimum fee, \$5; maximum fee, \$250. (Laws, 1903, p. 4169; R. S., sec. 2127.)	Do.
Georgia	A fee of \$5 for recording articles. (Practice Code, sec. 5397.)	Do.
Idaho	When capital stock does not exceed \$25,000, \$5; over \$25,000 but not over \$100,000, \$10; over \$100,000 but not over \$500,000, \$20; when capital stock exceeds \$500,000, \$25; issuing certificate, \$3. (Pol. Code, 1901, sec. 102.)	Do.
Illinois	On capital stock of \$2,500 and under, \$30; over \$2,500 and not over \$5,000, \$50; for each additional \$1,000, \$1. (R. S., p. 53, sec. 10a.)	Do.
Indiana	A fee of one-tenth of 1 per cent on the amount of authorized capital stock; minimum fee, \$10. (Ann. Stat., sec. 7681.)	No annual franchise tax.
Indian Territory	A fee of \$25 for filing articles and \$10 for filing any amendment. (Stats., sec. 2212.)	Do.
Iowa	For capital stock up to \$10,000, \$25; for each additional \$1,000, \$1; maximum fee, \$2,000. (Laws, 1902, sec. 60; Sup. Code Ann., sec. 1610.)	Do.

Comparative statement of license tax or incorporation fees, etc.—Continued.

State or Territory.	Incorporation fee.	Annual State franchise tax.
Kansas	One-tenth of 1 per cent upon first \$100,000 of capital stock or fractional part thereof; one-twentieth of 1 per cent upon the next \$400,000 or fractional part thereof; for each \$1,000,000 or major part thereof over \$500,000, \$200. (C. S., secs. 1261, 1264.)	No annual franchise tax.
Kentucky	One-tenth of 1 per cent upon the authorized capital stock. (Laws 1902, p. 367.)	Do.
Louisiana	A fee of \$5 for recording articles of incorporation. (Laws 1902, act No. 168.)	Do.
Maine	Incorporated under general law. 1. Capital stock up to \$10,000, \$10; over \$10,000 but not over \$500,000, \$50; for each additional \$100,000 over \$500,000, \$10; a fee of \$5 each to be paid to the attorney-general, secretary of state, and register of deeds. (Laws 1901, p. 229, sec. 18.) 2. Under special act of legislation. Capital stock up to \$5,000, \$15; over \$5,000 but not over \$10,000, \$25; over \$10,000 but not over \$50,000, \$75; over \$50,000 but not over \$100,000, \$125; for each additional \$100,000, \$60. (R. S., special act, p. 48, sec. 18; Laws 1897, p. 225.)	Tax on the authorized capital stock up to \$50,000, \$5; over \$50,000 but not over \$200,000, \$10; over \$200,000 but not over \$500,000, \$25; over \$500,000 but not over \$1,000,000, \$50; on each additional \$1,000,000, \$25; (Laws 1901, p. 229, sec. 3.)
Maryland	A fee of one-eighth of 1 per cent upon the amount of authorized capital stock. (P. G. L. 1894, p. 114, sec. 38f.)	No annual franchise tax on corporations doing business. Corporations organized and not doing business shall pay annually one-eighth of 1 per cent on the amount of capital stock. (P. G. L. 1900, p. 272.)
Massachusetts	One-fortieth of 1 per cent of total amount of authorized capital; minimum fee, \$10. (B. C. L. 1903, secs. 88, 89.)	Franchise tax of one-tenth of 1 per cent of the par value of the authorized capital stock; amount of tax paid to city or town during preceding year may be deducted therefrom; such excise tax shall not exceed \$2,000 in any one year. (B. C. L., 1903, sec. 75.)
Michigan	One-half of 1 mill upon each dollar of authorized capital stock; minimum fee, \$5. (Compiled Laws 1897, sec. 8574.)	No franchise tax.
Minnesota	For capital stock up to \$50,000, \$50; for each additional \$10,000, \$5. (Stats., secs. 3391-3; Laws 1901, p. 206.)	Do.
Mississippi	For capital stock up to \$10,000, \$20; over \$10,000 but not over \$30,000, \$40; over \$30,000 but not over \$50,000, \$60; over \$50,000, one-tenth of 1 per cent; maximum fee, \$250. (Laws 1900, p. 44.)	Do.
Missouri	Fee of \$50 on authorized capital stock of \$50,000 or less and \$5 for each additional \$10,000. (R. S., secs. 956, 3283.)	No annual franchise tax.
Montana	A fee of 25 cents for each \$1,000 of capital stock up to \$100,000; 20 cents on each \$1,000 above \$100,000 up to \$250,000; 15 cents on each \$1,000 over \$250,000 up to \$500,000; 10 cents on each \$1,000 over \$500,000 up to \$1,000,000; all over \$1,000,000, 5 cents on each \$1,000; minimum fee, \$10. (S. L., 1903, ch. 77, p. 280.)	No franchise tax.
Nebraska	For filing articles of incorporation, \$10; and if the capital stock authorized exceeds the sum of \$100,000 an additional fee of 10 cents for each \$1,000 authorized in excess of \$100,000; also for recording articles 10 cents for each 100 words contained therein. (C. S. Ann., 1903, sec. 5905.)	No annual franchise tax. The value of the franchise is taxed along with its tangible property. C. S. Ann., 1903, sec. 4991.)

Comparative statement of license tax or incorporation fees, etc.—Continued.

State or Territory.	Incorporation fee.	Annual State franchise tax.
Nevada.....	15 cents for each \$1,000 of the total authorized capital stock; minimum fee, \$15. (S. L. 1908, ch. 88, sec. 102.)	No annual franchise tax.
New Hampshire.....	Incorporated by special act. If the corporation is doing business and has its principal office in the State \$50. (P. S., ch. 14, sec. 5.) Corporations which are organized under special or general laws, not carrying on their business or having their principal office in the State, for capital stock up to \$25,000, \$10; when it exceeds \$25,000 and is not over \$100,000, \$25; where it exceeds \$100,000 and does not exceed \$500,000, \$50; where it exceeds \$500,000 and does not exceed \$1,000,000, \$100; where it exceeds \$1,000,000, \$200. (P. S., ch. 14, sec. 6.)	Do.
New Jersey.....	20 cents on each \$1,000 of authorized capital stock; minimum fee, \$20. (Laws 1896, ch. 185, sec. 114.)	Franchise tax of one-tenth of 1 per cent on issued and outstanding capital stock up to \$3,000,000; over \$3,000,000 but not over \$5,000,000, one-twentieth of 1 per cent; for each \$1,000,000 over \$5,000,000, \$50. (Laws 1901, p. 9.)
New Mexico.....	A fee of 10 cents for each \$1,000 of its authorized capital stock; minimum fee, \$25. (Session Laws 1903, p. 14.)	No franchise tax.
New York.....	One-twentieth of 1 per cent of the total authorized capital stock; minimum fee, \$1; fee for filing, to secretary of state, \$10; recording, 15 cents per folio. (Laws 1901, p. 448.)	The annual franchise tax is determined by the dividends on the par value of the capital stock, and is levied on the amount of capital stock employed in the State. If dividends are over 6 per cent, three-twentieths of 1 per cent; for each additional 1 per cent of dividend, one-fortieth of 1 per cent; if no dividends on the appraised capital employed in the State, three-twentieths of 1 per cent. (Laws 1901, p. 658.)
North Carolina.....	A fee of one-fiftieth of 1 per cent of amount of authorized capital stock; minimum fee, \$25. (Laws 1901, ch. 2, sec. 96.)	Franchise tax on the paid in or subscribed capital stock under \$25,000, \$5; over \$25,000 but not over \$50,000, \$10; over \$50,000 but not over \$100,000, \$25; over \$100,000 but not over \$250,000, \$50; over \$250,000 but not over \$500,000, \$100; over \$500,000 but not over \$1,000,000, \$200; over \$1,000,000, \$500. (Laws 1901, ch. 9, sec. 91.)
North Dakota.....	\$50 for first \$5,000 or fractional part thereof; \$5 for each additional \$10,000 or fractional part thereof. (R. C., 1899, secs. 2865, 2866.)	No franchise tax.
Ohio.....	Fee of one-tenth of 1 per cent of the amount of the authorized capital stock; minimum fee, \$10. (Ann. Stat., sec. 148a.)	Franchise tax of one-tenth of 1 per cent of the subscribed or issued and outstanding capital stock. (Laws 1902, p. 124, sec. 1.)
Oklahoma.....	Fee of \$5 for filing articles of incorporation, and \$3 for issuing certificate. (Stats., 1893, sec. 2900.)	No annual franchise tax.
Oregon.....	A nominal fee of \$2.50 for filing articles of incorporation. (Ann. Laws, 1887.)	Do.
Pennsylvania.....	A fee of one-third of 1 per cent of the amount of the authorized capital stock. (Laws 1899, p. 189, sec. 1.) Iron, coal, oil, manufacturing, mining, or warehousing corporations created by special act must pay an additional fee of \$200. (Gen. Laws of Corp. Taxation, sec. 25.)	Do.
Rhode Island.....	Fee of \$100, or in case of capitalization for \$100,000 or more, one-tenth of 1 per cent upon such capitalization. (Compiled Laws, ch. 176, sec. 3.)	Do.
South Carolina.....	For capital stock up to \$100,000, one-tenth of 1 per cent; for amount of capital from \$100,000 to \$1,000,000, one-twentieth of 1 per cent; for amount over \$1,000,000, one-fortieth of 1 per cent. (Civil Code, sec. 1888.)	Do.

Comparative statement of license tax or incorporation fees, etc.—Continued.

State or Territory.	Incorporation fee.	Annual State franchise tax.
South Dakota	A fee of \$10 for examination and filing articles of incorporation. (Pol. Code, sec. 68.)	No annual franchise tax.
Tennessee	A fee of one-tenth of 1 percent of the amount of the authorized capital stock; for issuing charter, \$10; each corporation created by special act, \$100. (Laws 1899, pp. 2, 209, 432, sec. 9.)	Do.
Texas	For capital stock up to \$10,000, \$25; for each additional \$10,000, \$5. (R. S., sec. 2489.)	Franchise tax on the authorized capital stock up to \$50,000, \$10; over \$50,000 but not over \$100,000, \$20; over \$100,000 but not over \$200,000, \$30; over \$200,000, \$50. (Laws of 1897, p. 120.)
Utah	A fee of one-fortieth of 1 per cent on each \$1,000 of the authorized capital stock; maximum fee, \$2,500. (Laws, 1901, p. 58; R. S., sec. 965.)	No franchise tax.
Vermont	For capital stock up to \$5,000, \$10; over \$5,000 but not over \$10,000, \$25; over \$10,000 but not over \$50,000, \$50; over \$50,000 but not over \$200,000, \$100; over \$200,000 but not over \$1,000,000, \$300; over \$1,000,000, \$500. (Laws, 1898, p. 14.)	Tax on amount of capital stock or deposits up to \$50,000, \$10; on each additional \$50,000, \$5; maximum fee, \$50. (Stats., sec. 575.)
Virginia	1. Corporations created by special act: For capital stock up to \$5,000, \$25; over \$5,000 but not over \$10,000, \$50; over \$10,000 but not over \$25,000, \$75; over \$25,000 but not over \$50,000, \$125; over \$50,000 but not over \$100,000, \$200; over \$100,000 but not over \$300,000, \$325; over \$300,000 but not over \$500,000, \$450; over \$500,000 but not over \$800,000, \$575; over \$800,000 but not over \$1,000,000, \$750; over \$1,000,000 but not over \$10,000,000, \$1,000; for each additional \$10,000,000 up to \$90,000,000, \$250; over \$90,000,000, \$5,000. 2. Corporations organized under the general law: For capital up to \$5,000, \$15; over \$5,000 but not over \$10,000, \$30; over \$10,000 but not over \$25,000, \$45; over \$25,000 but not over \$50,000, \$75; over \$50,000 but not over \$100,000, \$125; over \$100,000 but not over \$300,000, \$195; over \$300,000 but not over \$500,000, \$270; over \$500,000 but not over \$800,000, \$345; over \$800,000 but not over \$1,000,000, \$450; over \$1,000,000, \$600. (Laws, 1902, p. 609.)	No franchise tax.
West Virginia	For issuing and filing certificate of incorporation, \$5, and in addition the first year's franchise fee: in case of issue of certificate after August 1, then one-tenth of the amount of annual tax for each month or fraction thereof to ensue before the 1st day of May, following. (Code, p. 54, sec. 18; Session Laws, 1903, p. 3, sec. 86a.)	Resident domestic corporations: Capital stock up to \$10,000, \$10; over \$10,000 but not over \$25,000, \$15; over \$25,000 but not over \$50,000, \$20; over \$50,000 but not over \$100,000, \$25; for each additional \$1,000 up to \$1,000,000, 5 cents; on capital stock over \$1,000,000, \$70; on each additional \$1,000,000 or fractional part thereof, \$10. Nonresident domestic corporations: Capital stock up to \$25,000, \$20; over \$25,000 but not over \$100,000, \$50; on each additional \$1,000 up to \$1,000,000, 40 cents; on capital stock over \$1,000,000, \$410; on each additional \$1,000 up to \$2,000,000, 30 cents; on capital stock of over \$2,000,000, \$710; on each additional \$1,000 up to \$3,000,000, 20 cents; on capital stock over \$3,000,000, \$910; on each additional \$1,000 up to \$4,000,000, 10 cents; on capital stock over \$4,000,000, \$1,010; on each additional \$1,000,000, \$50. (Laws, 1903, p. 3 sec. 87.)

Comparative statement of license tax or incorporation fees, etc.—Continued.

State or Territory.	Incorporation fee.	Annual State franchise tax.
Washington	Fee of \$10 for filing articles of incorporation, and \$5 for issuing certificate. (Pierce's Code, sec. 8467.)	Annual tax of \$10. (Pierce's Code, sec. 8471.)
Wisconsin	\$10 for filing articles of incorporation of beet sugar manufacturing companies and corporations manufacturing dairy productions; other corporations, for capital stock of \$25,000 or less, \$25; for each additional \$1,000, \$1. (Session Laws, 1901, p. 238.)	No franchise tax.
Wyoming	For capital stock up to \$5,000, \$5; over \$5,000, but not over \$100,000, \$10; for each additional \$1,000, 5 cents. (Rev. Stat., sec. 3080.)	Do.

Views of William C. Prentiss.

CORPORATIONS IN THE DISTRICT OF COLUMBIA.

EDITOR OF THE WASHINGTON LAW REPORTER:

Observing the article in your last issue on the standing of District of Columbia corporations in the Federal courts, I would suggest that some of the cases draw the distinction between the constitutional power of Congress to give the Federal courts jurisdiction of certain classes of cases and the question of whether Congress has done so by general or particular legislation. While in the latest judiciary act Congress has given the circuit courts jurisdiction of all cases arising under the Constitution and laws of the United States, yet in section 607, Code of the District of Columbia, specifying the powers of corporations organized under Subchapter IV, the language is "and be capable of suing and being sued in any court of law or equity in the District," which, under the doctrine "*expressio unius est exclusio alterius*," would seem to exclude from the Federal courts outside of the District of Columbia. For this reason I some time ago suggested an amendment, which was offered by Mr. Lacey, of Iowa, in the House of Representatives last session, making this clause read, "in any court of competent jurisdiction." Upon this phase of the question the following cases should be considered: *Adams Express Co. v. Denver, etc., Ry. Co.*, 16 Fed., 712; *Schaffer v. Nat. Life Ins. Co.*, 25 Minn., 534; *Pac. Removal Cases*, 115 U. S. 2; *Wash., etc., Co. v. Couer d'Alene, etc., Co.*, 160 U. S. 77; *Auten v. Bank*, 174 U. S. 125; *Oregon, etc., Co. v. Skottowe*, 162 U. S. 490.

I inclose a copy of a letter to Hon. Henry W. Palmer, the author of a pending bill authorizing the formation of corporations under the interstate commerce clause of the Constitution, which may be of interest to your readers.

Very truly, yours,

WILLIAM C. PRENTISS.

WASHINGTON, D. C., November 28, 1904.

APRIL 20, 1904.

HON. HENRY W. PALMER,
House of Representatives, Washington, D. C.

DEAR SIR: Having observed your interest in the enactment of a national corporation law and read with much interest the bill introduced by you authorizing the formation of corporations under the interstate commerce power of Congress, I have concluded to submit for your consideration some suggestions regarding the power of Congress to create corporations under its constitutional grant of power to legislate for the District of Columbia. The Northern Securities Company decision has apparently settled the question as to the constitutionality of your proposed interstate commerce corporation law, and it has occurred to me that a general corporation law, sanctioned by the interstate commerce and exclusive legislation for the District of Columbia clauses of the Constitution, would satisfy the growing demand for an amendment to the Constitution giving Congress exclusive power over the subject of corporations and could be made the means of providing a uniform corporation law.

You have no doubt observed the great number of corporations which have been formed under the corporation chapter of the Code of Laws for the District of Columbia, passed in 1901, and it is a demonstrated fact that business men are attracted by the opportunity of incorporating under Federal auspices. The code, however, is a very careless piece of legislation, and there have been considerable misunderstanding and misconception of the provisions of the chapter on corporations. With a view to giving legitimate interests exact and reliable information upon the subject we prepared a handbook some months ago, a copy of which I send you under separate cover. A great many bills have been introduced this session to amend the chapter on corporations in various respects, some designed to make it more liberal and others to limit its privileges wholly to local interests and enterprises, and the general subject is now under consideration by the committee on legislation of the Bar Association of the District, some of the members of which are inclined to favor the latter policy (which may properly be called a little Englander policy) and fail to appreciate the opportunity of furnishing the country with a uniform corporation law through the medium of the power of Congress to legislate for the District of Columbia, and also the fact that it is impracticable to limit the benefit of the law; for if the expense be increased or restrictive provisions inserted, even local interests will go to other jurisdictions to incorporate; and if the expense be not increased and the powers be broadened, it would not be practicable to limit corporations to activity in the District of Columbia.

What is needed, it seems to me, is an inexpensive, broad, and liberal law, coupled with a provision giving the Bureau of Corporations authority to make investigation so as to be able to furnish reports, in order that prospective purchasers of stock, upon application, may have reasonably reliable information as to what they are buying. I do not think, however, that it would be practicable to give power to require reports which would disclose the private business or power to inspect the books and accounts of the corporations, but the Bureau of Corporations, through requests for information and by investigation along legitimate lines, could, in a large measure, protect the public against investing in or dealing with fraudulent, illegitimate, or so-called wild-cat enterprises. The law could be put into such shape that, while protecting the public, it would be so reasonable and liberal as to induce all legitimate companies to incorporate under it and make organization under the laws of a State carry suspicion. As you know, the Federal courts, including the courts of the District of Columbia, have always administered safe and sound doctrines upon the subject of stock liabilities, consideration for the issue of stock, and fraudulent transactions in stock, and this is one of the attractions of incorporation under Federal auspices. There is one point that such a law should especially cover—the right to go into the Federal courts—and I believe that under the doctrine of the Pacific Railroad removal cases a provision giving the circuit and appellate Federal courts jurisdiction of all cases affecting such corporations would carry all litigation affecting them into these courts and secure uniformity of rulings and freedom from local influence and prejudice. As the code now stands it is extremely doubtful if corporations organized here have standing to go into the Federal courts, and for that reason many interests, especially mining companies, which would otherwise incorporate here hesitate to do so.

I might add that Mr. Lacey, of Iowa, has, at our request, introduced a bill to amend the code in this respect and another to amend the section requiring a majority of the trustees to be residents of the District.

I trust that you will pardon the liberty I take in making these suggestions, and that you may be sufficiently interested in the subject to cooperate in our endeavor to secure modifications of the provisions of the code needful to bring its corporation provisions up to date.

I have given this matter much thought and have a good deal of information on the whole subject; and if you should feel inclined to extend the scope of your bill along the lines I have suggested, I will be very glad to give you any aid that I can.

Very respectfully, yours,

W. C. PRENTISS.

Suggestions of H. A. Buscher, president East Washington Heights Citizens' Association.

1247 B STREET SE.,

Washington, D. C., January 17, 1905.

COMMITTEE ON DISTRICT OF COLUMBIA, U. S. HOUSE OF REPRESENTATIVES,

J. W. Babcock, Chairman, Washington, D. C.

GENTLEMEN: I notice that you are about to frame an amendment to the incorporation laws of the District of Columbia, and I have several suggestions to offer that, in

my opinion, will be of some value. We, as taxpayers, of course, wish to derive all the revenue possible from the use of the District for incorporation purposes, but I very much fear that if a very high rate, or even the rate spoken of by several parties in the past, is adopted it will work to our disadvantage, taking the matter from a financial standpoint.

The present fee charged is, of course, a great deal too small, but if we wish to attract outside parties to file their papers here we can not make the charges higher than the average costs of other States. Under the laws of South Dakota the fee is \$10, and Arizona \$10, with no additional charges for difference in amount of capitalization. In Nevada the costs for a \$100,000 of capitalization is \$25, with a slight increase of costs for additional capitalization, running about at the rate of 5 cents for each thousand. No fee less than \$10 is charged. The laws of Wyoming are somewhat similar.

My suggestion is that you make the fee \$10 for any amount of capital, with an additional fee of \$5 for a certificate of incorporation, one that could be framed and hung on the wall if desired. Incorporation could then be secured in the District of Columbia at a fair rate and one that would allow attorneys engaging in such business a fair charge.

You are of course aware that the fees received from parties who desire to strictly carry on a business in the District of Columbia would amount to but very little, so that in order to make the incorporation law a source of revenue we must make it attractive to outside parties. I venture to say that with an incorporation fee of about \$15 that the income to the District from filing fees alone will amount to \$30,000 per year, not to speak of the fees coming in from filing the annual reports, etc. If we establish a rate that will make the fees run over \$25, we will destroy the very good source of revenue and the District be out many thousands of dollars each year. Partnerships are fast becoming a thing of the past and incorporation is taking the place of same.

I also suggest that the wording of the present law be changed so that only one director or incorporator need be a resident of the District of Columbia; this will make the law more attractive to outside parties and is a very important matter to consider.

Trusting you will accept my suggestions in the spirit in which I tender them, I beg to remain,

Yours, very respectfully,

H. A. BUSCHER,
President East Washington Heights Citizens' Association.

C

D. C. EDWARDS AND JOHN C. WHITE v. W. GODFREY HUNTER.

HEARINGS BEFORE THE COMMITTEE ON ELECTIONS NO. 2, HOUSE OF REPRESENTATIVES, IN THE CONTESTED ELECTION CASE OF D. C. EDWARDS AND JOHN C. WHITE v. W. GODFREY HUNTER, FROM THE ELEVENTH CONGRESSIONAL DISTRICT OF KENTUCKY.

WASHINGTON, D. C., *January 10, 1905.*

The committee met at 10 o'clock a. m., the Hon. Marlin E. Olmsted, chairman, in the chair.

There appeared before the committee D. C. Edwards, esq., accompanied by his counsel, Hon. J. W. Alcorn; John C. White, esq., accompanied by his counsel, Hon. John M. Thurston, George N. Jesse, esq., and C. C. Calhoun; Hon. W. Godfrey Hunter, accompanied by his counsel, Gen. W. W. Dudley and W. R. Ramsey, esq.

The CHAIRMAN (Mr. Olmsted). Gentlemen, while we are waiting for a quorum we might arrange at this time for the order in which this case can be heard. We would like some expression of the wishes of counsel.

Mr. ALCORN. In behalf of contestant Edwards, I will say that we desire to have the privilege of opening the case by presenting the case with a statement; and the right to conclude the argument in behalf of Edwards. I think that is the usual procedure.

The CHAIRMAN. I presume that contestant White would be entitled to the same.

Mr. ALCORN. One special reason why I make that suggestion is that counsel for Mr. Hunter have not filed any brief, and what line of argument they will attempt to follow we will not know until we have heard their argument.

General DUDLEY. Mr. Chairman, I would like to say that we have not been able to file a brief, and the reason for it is this: Counsel for Doctor Hunter, Mr. Ramsey, who has taken the testimony, was to prepare the brief. It was expected that we should have it here in time for the meeting of the committee. But owing to circumstances, over which neither of us have control, Mr. Ramsey has been unable to get his brief in shape. It was our intention to present our facts to the committee, as soon as it was ready, and ask that we might have forty-eight hours delay in the hearing of the case in order that we might submit our brief and have it before the committee before the arguments were made, in order that counsel might have the information we desire to present as to our defense. We could not have filed any reply to Mr. White's brief, as he has only filed it this morning, and we were placed in possession of a copy of it on yesterday. Of course we could not file an answer until we had seen his. In the case of Mr. Edwards, no fault can be found with counsel for Mr. Edwards,

because his brief has been on file a sufficient time. However, with regard to the making of the brief of contestee, if we could have forty-eight hours further time we will put a brief in the hands of the committee before the argument begins. That is the best we can do under the circumstances.

Now, one word with regard to the arrangement of the hearing of this case. It seems to us that the main issue to be tried by this committee is the issue between Edwards and Hunter. It would be proper, and I think the most intelligent way, to go ahead with this case and try the issue between Edwards and Hunter as a separate and independent case, and treat the case of White against Hunter and Edwards as a separate case. The record is made up in that way, and it would be the most orderly and the most logical way to consider the case. I think that counsel for White would be entirely willing to take the case up in that way; in other words, after the case of Mr. Edwards has been heard by the committee Mr. White's case shall be taken up.

Mr. ALCORN. Do I understand counsel as indicating that he would only use the testimony in the case of Edwards against Hunter?

General DUDLEY. So far as we are concerned we would stipulate that we would use this interchangeably.

Mr. ALCORN. We desire to use a portion of the White case testimony.

Mr. THURSTON. I suppose the committee, having this whole matter before them, will consider this testimony together.

General DUDLEY. I do not see how they could very well do otherwise.

The CHAIRMAN. You are at liberty to refer to any part of the testimony before the committee.

General DUDLEY (addressing Mr. Thurston). You have no objection to a separate hearing on your part of the case?

Mr. THURSTON. No.

The CHAIRMAN. We will hear the Edwards case. Just at this time we are short of a quorum, and I suppose, strictly speaking, we should not, just now, proceed. Sometimes these hearings are before a sub-committee.

General DUDLEY. Mr. Chairman, we would like to have you give us the indulgence of forty-eight hours, in order that we may present the brief.

The CHAIRMAN. I don't think that would be a reason for delaying the hearings.

Mr. THURSTON. So far as Mr. White is concerned, I will say that we have no objection to proceeding, and let General Dudley file his briefs later.

The CHAIRMAN. I would suggest that the fact that through any unavoidable circumstances they have not filed a brief, that does not afford General Dudley's client a ground for contention. It might possibly be made a ground for his opponent, if they chose to make the application. If they are satisfied to go ahead, and file the brief later on, all right.

Mr. ALCORN. In justice to General Dudley I will say that he asked me if I would consent to postpone the hearing for two days, so as to give him time to file the brief. I said to him that my professional engagements at home would prevent me, I thought, from consenting to such an arrangement, as I have arranged my business at home correspondingly. I dislike to appear as using any lack of courtesy. I

know Mr. Ramsey was sick, but nevertheless I am satisfied that Mr. Ramsey has had time to prepare his brief and file it here, and I think that to file it now would place us at a disadvantage.

The CHAIRMAN. I do not see that the failure of one party to file a brief would afford any other party a reason for contention. It might afford some ground for contention regarding an application to be permitted to file the brief later on; but the hearing, I think, should proceed. The committee is glad to have all the briefs and all the information it can get.

Mr. ALCORN. They should file a brief and give the committee the information, and we should have some chance to respond to the brief and see how it would work out.

The CHAIRMAN. We can begin the argument at once.

Mr. RAMSEY. I would like to state, so far as I am concerned, in answer to what Mr. Alcorn has said, that when I went to Denver on account of the condition of my health, I expected to return to Kentucky in a short time, and to prepare the briefs before the time fixed for the hearing of this case; but after I got out there the hearing of the case was fixed, and, as I did not have the papers with me there, having left them at home, of course could not prepare the brief. I expected that I would be there in time to prepare it. That is how the delay occurred. I got back as quick as I could after the time for the hearing was fixed.

The CHAIRMAN. Still there were other able counsel in the case, who might have prepared the briefs.

Mr. WEEMS. The other side not objecting, what reason is there for delay in the argument?

The CHAIRMAN. None at all.

General DUDLEY. None, excepting that we have asked for forty-eight hours in which to file a brief.

The CHAIRMAN. I do not think that the committee would accept that as ground for delay in the oral argument. I think the committee would be very glad to have you do it, speaking informally; and so far as I am concerned, I would be willing to grant the forty-eight hours desired for the preparation of the brief. But we would not consider that the oral arguments should be delayed for that purpose.

Mr. ALCORN. Mr. Chairman, it might be that the contestant would desire a few days of time to file a reply to that brief.

The CHAIRMAN. The committee will give the contestant the opportunity.

General DUDLEY. I would like to ask the chairman if it is likely that the committee will have a quorum present this morning?

Mr. CURRIER. I think so.

General DUDLEY. Is there any objection to going on before this committee as a sort of subcommittee?

The CHAIRMAN. I think we might go on with the argument. It is hard to get a quorum, and it is also hard to keep one all the time in these cases.

Mr. THURSTON. So far as we are concerned, we will take no exception to the fact that there is no quorum present.

The CHAIRMAN. Gentlemen, if you are all willing, we are ready to proceed.

Mr. ALCORN. We do not object to that suggestion.

The CHAIRMAN. Very well, then we will proceed.

General DUDLEY. Mr. Chairman, could it be fixed at this stage of the proceedings, before we go any further, as to the time that shall be allowed on each side?

The CHAIRMAN. What time do you desire, gentlemen, for Mr. Edwards?

Mr. ALCORN. We came expecting an hour and a half on a side. I believe the published rules establish that.

The CHAIRMAN. We are badly crowded with business, and we would like to have you present your case as briefly as you can. How many counsel will speak on your side?

Mr. ALCORN. Mr. Edwards will state the case on his own behalf, and we will be expected to close.

The CHAIRMAN. Will that be satisfactory to you, gentlemen?

General DUDLEY. Yes; but I think the committee ought to allow two hours on a side.

The CHAIRMAN. This is in the very heart of the session, and we can not sit very well during the sessions of the House. Every member is expected to be on the floor at 12 o'clock.

General DUDLEY. I would like to present our case very fully, in the absence of our briefs.

The CHAIRMAN. I don't know that you are entitled to that privilege, exactly. I should say that you ought to have had your briefs here.

General DUDLEY. It seems to me that it would be very reasonable to give two hours to a side to hear this case.

The CHAIRMAN. That is another proposition, to put it on the ground that you have not filed your briefs. I think probably that we will be able to indulge you to the extent of two hours on a side; but we would like to keep the argument within that time if you can possibly do so.

ARGUMENT OF CONTESTANT HON. D. C. EDWARDS.

Mr. EDWARDS. Mr. Chairman and gentlemen of the committee, I shall endeavor to be brief, and I shall confine myself to the facts. I also wish to say that I shall not knowingly misstate a proposition of law, although I expect that the legal questions in this case will be argued by others and not by myself.

For the information of the committee I will say that in September, 1903, we had a vacancy in the Eleventh Congressional district of Kentucky, a vacancy caused by the death of Judge Boreing, of my town, London, Ky., who had been a Member of Congress and was then serving his third term. I will also say that it had been customary in that district for several years to make nominations by primary elections. I want to state further that within the bounds of the Eleventh district, as nearly as possible for the Democratic legislature of Kentucky to make it so, are corralled all the Republicans of Kentucky. They have made a district more than 300 miles long, composed of 19 large mountain counties. Many of the counties, I suppose, are 50 miles from a railroad—I will say that some of the counties are that distant—and many of them are 25 miles from a railroad.

Where so many Republicans are thrown together it had been customary to make a nomination which was equivalent to an election by

a primary election, where all the Republicans could have a say so; but in this case, to fill a vacancy—an emergency case—the election had been called by the governor of Kentucky to be held on the 10th day of November, and the proclamation was issued about the 5th day of October, thus only giving thirty-five days' notice. The laws of Kentucky require forty days' notice to hold a primary election, and as it was absolutely impossible to hold a primary election the party was compelled to resort to the old-fashioned delegate-convention system, and the delegate convention was called.

The CHAIRMAN. Do I undersand that the rules of the party require a primary convention?

Mr. EDWARDS. Yes, sir; the rules of the party.

Mr. TALBOTT. Have you a primary election law?

Mr. EDWARDS. We have a primary election law. It had become customary in that district to decide by primary, but it was not law. The laws of Kentucky prescribe three ways and three ways only to make a nomination or to get upon a legal ballot: First is by primary election, another by delegate convention, and another by petition signed by so many hundred names of qualified voters, in which way Mr. White got on this ballot.

Now, this convention was made up from the result of mass meetings called in each county, as was the custom, and the delegates were elected to the convention, which convention was called to meet in Middlesboro on the 17th day of October. And I want to call the attention of the committee to the fact that the election must be held on the 10th day of November, while our regular State election came on the 3d day of November. This special election to elect a Congressman in the Eleventh Congressional district was called for the 10th day of November, exactly one week after the regular State election, at which we had to elect a governor. Our convention was held on the 17th day of October, so we had but little time to perform this duty. In that district, basing the representation upon giving one delegate for 100 votes cast for McKinley in 1900, we have 346 delegates in the district; and those delegates, or the delegates representing each of the 19 counties constituting that body of 346 delegates, met in Middlesboro, Ky., on the morning of the 17th of October, it being Saturday, at 10 o'clock. The convention was regularly called to order by the district chairman according to the rules of the Republican party or the customs of that party. I think now that I am stating facts about which there is no dispute.

Mr. WEEMS. Let me ask you right there, how your district committee is made up?

Mr. EDWARDS. The people meet in the different counties, and in the different precincts, and elect a precinct chairman. Those precinct chairmen meet and elect county chairmen. Then when the convention is called to elect delegates to the State convention, which convention elects delegates to be sent to the national convention, when that State convention meets they elect chairmen of the Congressional districts.

Mr. WEEKS. Who makes up the committees of the Congressional districts? The various county chairmen?

Mr. EDWARDS. The various county chairmen. In that district the committee is composed of the 19 chairmen from the different counties, and the district conventions, which meet each Presidential year to

select delegates to national conventions, elect the chairman of the Congressional district committee.

The chairman of that district called the convention to order, and the temporary chairman of the convention was elected. The line, of course, was drawn between the two strongest candidates in the convention, Doctor Hunter and myself. Mr. White was not before the convention. There were some other gentlemen present. Mr. Ramsey, who was present, was a candidate before that convention, and there were some others. But Doctor Hunter and myself were conceded to be the strongest candidates, and the line was drawn. The convention was organized by my friends by a majority of 23 votes. The regular committees were appointed, the regular routine business gone through, and adjournment was taken for dinner. We reconvened after dinner, and the afternoon was put in in hearing reports and waiting for reports, as is the custom in conventions of that sort. I need not attempt to enlighten many of you gentlemen on that point, for you have been in politics long enough to know about those matters.

The convention adjourned again for supper, and reconvened after supper, continuing to hear and pass upon questions, to accept a number of reports, and wait for other reports, until the question was raised that it was midnight or Sunday morning, and the demand was made that the convention adjourn until Monday morning. But owing, as you will see by the evidence, to the fact that there seemed to be a premeditated and concerted plan and action by the friends of Doctor Hunter, and Doctor Hunter and himself, to raise trouble, threats to throw the chairman out into the street, and so forth, and owing to the fact that a number of people who were not delegates in that convention, but who were brought in there on Saturday evening from around the saloons of that town, and owing to the fact that the convention had been brought to the point where men would undertake to draw their pistols, in the wise judgment of the delegates of that convention, a motion was made to adjourn until Monday morning, and to meet at London, Ky., at 9 o'clock on that morning.

Mr. TALBOTT. In your home town?

Mr. EDWARDS. My home town, and the town of Mr. Ramsey, who was a candidate also, and Mr. Parker, another candidate, and to the town where all the conventions in that district had been held.

When that motion was made a gentleman was on the floor discussing a contest case, and the chair stated that he would not cut off the debate by putting the motion, but when the gentleman had finished his argument that he would put the motion, and that gave the convention plenty of time to deliberate, consult, and consider what was best to do. When the gentleman had finished the question was restated and a roll was called. Upon that platform sat the secretary of the convention, assisted by a teller selected in the interest of every candidate before that convention, some five or six. The roll of the counties was called alphabetically, as was the custom. The vote was distinct, plain, and unquestioned, and not objected to. It was footed up by the secretary and the tellers, one of which represented the interests of Mr. Ramsey, who was then a candidate before that convention, and another represented the interests of Doctor Hunter, and so on around. It was found that of the 346 delegates in that convention 223 voted for the motion to adjourn the convention to meet in London

on the following Monday at 9 o'clock, and 123 voted against it, giving a clean, clear majority of 100 delegates on that question.

I believed then, as I believe now, and as I think all you gentlemen believe—and as I believe all other gentlemen believe—that that convention was a sovereign body; that it had a right to adjourn for dinner; that it had a right to adjourn for supper; that it had a right to adjourn over Sunday; that it had a right to adjourn to meet anywhere else in the city of Middlesboro; that it had a right to meet anywhere else in the district. They were there on the ground; they saw the surroundings. They had been in that meeting from 10 o'clock on Saturday morning until 12.30 or 1 o'clock that night. They knew the conditions and the facts and the surroundings, and in their judgment they voted to adjourn by a majority of 100. The convention adjourned, and it was so declared by the chairman. And then it was, as you will find by the proofs in the case, that Doctor Hunter and his friends, for the purpose of defeating the will of the majority of the people assembled in delegate convention for the purpose of fraudulently procuring a nomination to which the people of that district had said they were not entitled, met in that same convention hall after the dead hour of midnight on Sunday morning, after a convention in which they had participated had, by a clean 100-delegate majority, said that they would adjourn to meet at another time and place, and fraudulently conspire together.

Then it was that they called in the counsel and advice of Democrats connected with the State organization of the Democratic party, and there they decided that they could procure a fraudulent nomination, and through the assistance of this Democratic organization get Doctor Hunter upon the official ballot of the Eleventh Congressional district of Kentucky, the Republican stronghold of Kentucky, where the people vote for their party and for their nominees, regardless who he is or where he comes from. The evidence shows, and it is before you, gentlemen, though not as strong as the facts and the actual observation of the parties at that time show, but I think plainly and clearly enough, that the action of these parties was not legal, was not for the interest of the party, but that it was for a fraudulent purpose. And I want also to say that these gentlemen, acting with and by the consent of Doctor Hunter, then and there called together their friends; and you will find in evidence that it was announced from the rostrum by more than one gentleman for "All you Hunter and Ramsey men remain in here. This convention has not been legally adjourned. We don't want you other fellows to stay in here;" because you understand that if the other fellows had stayed in there they could have controlled the convention.

"Now is the time. The convention has adjourned. We can not do anything while the convention is in session. We have tried that. We are in the minority and we will conspire. We will get some sort of a certificate through this Democratic organization, and we will get our names under the log cabin, and then let them whistle." I think the evidence will bear me out that there was not a hundred legal delegates there, because not all of these 123 delegates who voted against the convention's moving and adjourning to London were willing then to turn around and go into this conspiracy and to undertake to get Doctor Hunter's name upon the ballot in a manner regardless of the interests of the party and the fairness and the equities in the case.

But many of them refused to stay and went to their hotels or took the Sunday train for London to take part in the convention over there. So I say that less than 100 of the legal qualified delegates out of that 346 who participated in this convention held there stayed on that Sunday morning after this convention had adjourned. You will find that my friends on the other side will take great pleasure in denominating this as a split. I would like to have some gentleman define what constitutes a split in a convention if the adjournment of that convention by 100 delegates majority is denominated a split. I say that after they convened there they had less than 100 legal delegates. They had less than a hundred men all told who participated in that convention that was held after the regular convention, which had adjourned to meet the following Monday morning in London.

Now, then, you gentlemen do not think much of this contest. Neither do I. I have thought that I would suffer my political head to be cut off, that I would be drawn and quartered before I would ever put my name to a contest paper. You have perhaps heard it said that it is a matter of salary. I want to say to you that if it was a question of money when a man runs for Congress in the Eleventh Congressional district of Kentucky, that he would never run. And if there was no higher, no better object in this contest, if there were no greater benefits to the Republicans of Kentucky and the Republicans of the United States, and to me individually, than the small amount of back salary that is in it, I would walk out of this committee room and go home to-day. But I want to say to you that it is a question of whether or not the majority shall rule, it is a question whether or not in Kentucky we are going to fight Goebelism in the Republican party as well as in the Democratic party. If the organization of the party amounts to nothing, if a man can get on the ballot anyway, just so he gets on, then what encouragement is there for a Republican or a Republican organization in the State of Kentucky? I submit to you, gentlemen, individually, if you had been in my place, if you had been backed by a convention that had adjourned by 100-delegate majority to go to another town and place, and some gentlemen had gotten together 45 or 50 or 60 delegates after that convention had adjourned and procured a certificate of nomination for himself, would you fight or would you lay down? Put yourself in my place and ask yourself that question. Take it home with you. Consider it from all points.

Now, on Monday morning, at the regular time, 9 o'clock, in the place designated at London, the convention met with 278 of the legally qualified delegates out of the 346. And I want to state right here with regard to a question that will perhaps be brought up, that in this delegate convention, as in all others, there are some contests, and in our State, and I suppose it is true in every State in the Union, and in all these conventions, the delegates from the counties who have the indorsement of the county organizations are recognized and entitled to vote in the organization of the convention. I want to say that I take it that there will be no dispute about that question. No gentleman will dispute that this was the fact and that this was done in this instance.

In London the 278 delegates, regularly qualified legal delegates, met in that convention and took up the business of the convention

where they had left off on the Saturday night previous in Middleboro. They gave me the nomination.

MR. LANDIS. How many delegates did you say there were altogether?

MR. EDWARDS. Three hundred and forty-six. There were 278 at London.

You will see by the evidence and by the law of Kentucky that the certificate of nomination must be filed with the secretary of state. The secretary of state then certifies to the various county clerks the name of the nominee who is entitled to have his name printed upon the official ballot under the device of the party, which in Kentucky is a log cabin.

You will see also by the evidence that Doctor Hunter had a Democratic lawyer by the name of M. H. Roher, one who was called into the conspiracy, and that he sent him to Frankfort, the seat of government, where the Democratic secretary of state has his office; that he sent C. W. Metcalf, another Democratic lawyer of that county, who was on the advisory committee from the Eleventh district in the Democratic campaign committee—that he sent him to Louisville, Ky., to the Democratic headquarters; and you will find by reading his evidence, the evidence of C. W. Metcalf, that he went into the Democratic headquarters and discussed this question; that he met the Democratic secretary of state, Mr. C. B. Hill, the fellow that was in possession of Caleb Powers's office; that he told him what was the best thing for the Democratic party; and while the secretary of state will not admit just exactly what he said, he said that he held out to him that it was the best thing for the Democratic party that Doctor Hunter's name should appear under the log cabin. He came there in Doctor Hunter's interest and represented him as his attorney, as likewise did M. H. Roher, the other Democrat who was sent to Frankfort.

I think if you will read the evidence of Mr. Metcalf closely you will find there that by agreement Doctor Hunter met him after night on the corner of a street in Louisville, Ky., where the Seelbachs Hotel is located, and where the Democratic headquarters are situated in the fourth story of that building. And you will find that Metcalf says that he came down from the Democratic headquarters and met Doctor Hunter by agreement on the corner after dark and told him that it had been "fixed," or words to that effect, and that Doctor Hunter's name would go on under the log cabin. Is there any doubt of fraud? Is there any doubt of a conspiracy? And although the doctor is known as a gum-shoe statesman, and it is said that he wears his gum shoes all the time and keeps his mouth closed to the press and to the public, has it not been proven by this evidence that he was present, that he helped to conspire, and that he was the beneficiary of all this conspiracy and all these corrupt acts?

Isn't it as clear as the noonday sun—can there be any question before a committee, a jury, or a court—that Doctor Hunter was guilty of a fraud when he bolted the action of that convention, which had adjourned by a decisive majority, and undertook to procure the nomination through a weak minority there after midnight, on Sunday morning, and employed Democratic lawyers to go to the seat of government at Frankfort to induce the Democratic secretary of

state to certify his name to the county authorities? When two or more names are claimed as the proper nominees from a district, it is the duty of the secretary of state to obtain, or ascertain, from the governing authority which is entitled to the nomination. But Mr. Hill disregarded the law in this respect. Doctor Hunter's certificate was filed one night in his absence, filed with his deputy while he was in Louisville; and that when he returned to Frankfort the next morning my certificate had been filed. But yet he went on without waiting for the governing authority to designate the nominee, and he certified at once to the clerks that Doctor Hunter was the nominee and entitled to go under the log cabin, without waiting for the governing authority to act.

The position I take is, gentlemen, that when that convention adjourned it had a right to adjourn. When it went to London and met there with a large number of delegates, 278 and more, and nominated me, I was the legal nominee. Is there any disagreement on that proposition? Then I assert that when the secretary of state certified that Doctor Hunter was the nominee he did it without authority. If you will read his evidence you will find that he so decided himself, and revoked that certificate. And the position I take is that when he revoked that certificate every legal right that Doctor Hunter had upon that ballot before that was withdrawn.

Mr. TALBOTT. Was he to send a notice to all the clerks of the counties before the ballot was printed?

Mr. EDWARDS. Yes, sir.

Mr. SULLIVAN. Was there sufficient time left to print the name on the ballot?

Mr. EDWARDS. Yes, sir; on the 3d day of november our regular State election was held. On Tuesday this special election, as I stated, was to be called one week afterwards, on the 10th day of November. On the night of the 2d day of November a judge of the court of appeals decided that, in his opinion, in an injunction case that I had filed to prevent the clerks from circulating and distributing these ballots with Doctor Hunter's name upon them, the secretary of state should have waited until the governing authority had acted; and that very night the governing authority, the Congressional district committee, met and certified that I was the nominee and entitled to go under the log cabin. I took the certificate to Mr. Hill, and he went and consulted with the judge of the court of appeals of Kentucky; and after advising with him, wired the county court clerks in the 19 counties revoking the certificate that he had made of Doctor Hunter and certifying that I was the nominee. That was on Wednesday morning, six days before the election.

Mr. LANDIS. Who prints your county ballots in Kentucky?

Mr. EDWARDS. The county clerk has them printed.

Mr. LANDIS. How long before election day must they be printed?

Mr. EDWARDS. Three days.

Mr. LANDIS. When are they certified to him? Was there time?

Mr. EDWARDS. Yes; there was time. A great many of them had two sets printed, to enable him to see what the order would be.

Mr. SULLIVAN. That was the action of the court in which you sought relief?

Mr. EDWARDS. Yes, sir.

Mr. TALBOTT. Then your case came to trial, argument, and decision?

Mr. EDWARDS. Not on the merits; he did not take jurisdiction. It was in the injunction case.

Mr. MILLER. The court simply held that the governing authority, the party, was the proper party to determine that his name should go on the legal ballot?

Mr. SULLIVAN. That was the decision of the appellate court?

Mr. EDWARDS. Now, after the secretary of state had consulted with the judge of the appellate court, and had made this certificate certifying that I was the nominee and revoking the certificate that Doctor Hunter was the nominee, these ballots were printed and sent out at once, except where Doctor Hunter was able to cause the clerks who were his friends to retain the ballots with his name upon them; and I think the evidence shows that he went personally to see several of these clerks and persuaded them—he threatened to put one of them, I think, down in Wayne County, in the penitentiary because he didn't put out the ballot with his name on under the log cabin. I think that was in Wayne County.

Mr. WEEMS. That is one of these five counties?

Mr. EDWARDS. Yes, sir.

Mr. CURRIER. Was Doctor Hunter's name on the ticket in Wayne County?

Mr. WEEMS. That was what I was trying to get at, whether he succeeded.

Mr. EDWARDS. No, sir. On Wednesday night, after these certificates were made by Mr. Hill, the secretary of state, after Doctor Hunter's certificate had been revoked and my name was certified, Doctor Hunter sued out an injunction before a judge in the city of Louisville, more than one hundred miles from the closest line of the Eleventh district, absolutely without jurisdiction, as was known by all the lawyers in the courts of Kentucky; but it answered the purpose to occasion further delay and to further carry out the doctor's fraudulent intention of defeating the will of the people in this matter and by any chance get his name upon the legal ballot. That Democratic judge issued his injunction, enjoining every clerk in those 19 counties from circulating ballots with my name printed upon them as the nominee. That was on Wednesday night. For that news to be spread and sent to these 19 counties—

• Mr. SULLIVAN. Were you represented at that hearing?

Mr. EDWARDS. Yes. He fixed the hearing for Saturday night, the Saturday night previous to the election on Tuesday. He might have fixed it for Saturday, but it was not concluded until Saturday night. I was represented at the hearing. The Saturday before the election on Tuesday he heard and dissolved his own injunction and temporary restraining order.

Now, the question comes back to me, and to you, gentlemen, as it did from the people in the Eleventh district, and especially from Doctor Hunter's friends, If you are under the log cabin in the legal official ballot of 14 counties, and Doctor Hunter was only upon the ballot in 5 counties, and he got the most votes, does not that show that the people were for Doctor Hunter? But I want to call your especial attention now to the condition of affairs for the next three days and until after the election. In the first place, I insist that Doctor Hunter,

if he had been a true Republican, working in the interests of the Republican party, would have quit at Middlesboro when the convention adjourned against him, or at least he would have gone to London and taken his chances. I believe that you will agree with me that I was entitled, and the only man entitled, to the Republican nomination and to being on the official ballot. After this judge in Louisville had on Saturday night dissolved this restraining order—if that notice had been mailed out on Sunday, which is not at all probable in court matters, as you all know; but if it had been mailed out on Sunday it could not possibly reach all the county court clerks in that district before the ballots had been voted on Tuesday morning.

A letter going to Leslie County, Ky., in the Eleventh Congressional district, from Louisville, if it was mailed on Sunday morning, would get out to London on Monday morning, the closest point by railroad. Then it must go 60 miles overland on horseback to get to the county seat of Leslie County; and on Monday it would get halfway to the county seat of Clay County, and on Tuesday it would go the rest of the way and reach the county seat of Leslie County. Until it does reach the county seat of Leslie County the clerk of the county court will not know anything of the facts. He was Doctor Hunter's friend. He could keep still about it. But in this case the polls would be closed and the election would be over. If it had reached there two days before the election, unless they had hurried about their work and a man had sent them to every precinct and had made a house-to-house canvass the voters of that county could not have known that that injunction had been dissolved and that my name was to be printed on the ballot that was the official ballot.

MR. CURRIER. Did they have any knowledge whatever? For instance, in Leslie County?

MR. EDWARDS. By the regular course of things it would have reached there about Thursday or Friday.

THE CHAIRMAN. Before the election, before the restraining order?

MR. EDWARDS. Yes, sir.

MR. SULLIVAN. Do I understand that the restraining order was the cause of Doctor Hunter's name being under the emblem in these five counties?

MR. EDWARDS. That was one cause, and another cause was that the clerk acted for him. But we will get to that a little later.

MR. SULLIVAN. Did they receive notice that the injunction had been dissolved in time to print these ballots?

MR. EDWARDS. In all these five counties, I think so. I think they are close enough to the railroad to receive the notice, but I don't know whether there is any proof of that or not. What I want to get clear before this committee is that although my name was printed in the 14 counties, I was not running under the log cabin in those 14 counties, but against a Democratic injunction, issued by a Democratic judge, through the interests of Doctor Hunter and his attorneys. It was done for no other purpose, as is shown by the proofs and by the facts. Of course the intention was to get the Doctor's name on the ticket in a few of these big voting counties along the railroad, where they could get the vote out, and to prevent the people in the outlying districts passing upon it. And it has been proven by the Commonwealth's attorney and by other reputable gentlemen that when the voters went to the polls up there they were told

by the election officers of the town precincts that my name had been enjoined by the court, and that they would not count a vote cast for me under the log cabin; that the only way that they could vote for me would be to write my name in the ballot, although it was printed there. The Commonwealth's attorney, who is a lawyer as well as the leader of the Republicans of that county, took a ballot and stamped it with a stencil in the circle under the log cabin, went down and stamped it in the circle opposite my name where it was printed, and wrote my name in a blank line and voted it, and said "I will see if you count that."

There were dozens and scores of other voters who got confused, and under the circumstances they said that they did not want to be dragged down to Louisville before a Democratic court and put in prison because they had violated a restraining order, and be next-door neighbors to Caleb Powers and William Harvey. They did not vote. Some of them went home and said that if Doctor Hunter is perpetrating a fraud of that kind on the Republicans that they would vote for White. Up in Whitley County, where they obtained the restraining order on Monday, one day before the election, they had runners all over that county with circulars, and a man standing at the polls telling the voters that if they voted for Edwards under the log cabin that they would be put in jail by the court; that it was a violation of the court's order, and that they would be held in contempt and punished for contempt. They drove them away from the polls by the dozen.

The CHAIRMAN. Were any of the votes that were cast for Edwards under the log cabin rejected by the election officers?

Mr. EDWARDS. Not that I know of; no, sir. They were only intimidated that way.

General DUDLEY. If you will permit me, I would like to say that it would enlighten the committee if you would point to the evidence of what you have just been stating in the record.

Mr. EDWARDS. I will later on; yes, sir.

General DUDLEY. I fail to find in the evidence anything of that sort.

Mr. EDWARDS. I can not give them all, as my time is about up, but I will refer to the testimony of William Lewis and Abner Eversole. I could name more who have sworn to these facts.

Mr. WEEMS. One thing has occurred to me in reading the record, and I want to bring it to your attention. Of course the people of the district have a right to elect any individual they please to Congress, any nominee, no matter how bad a man that nominee may be, and unless you can overthrow the fairness of the election, which I believe you undertake to do in this way: That Doctor Hunter tampered with certain election officials of five counties, and that the ballots were wrong. That is the way I believe you connect this matter with the election. Now, I would like to have some discussion of that proposition of fact. What proof was there in the record to show that he fraudulently tampered with the five county clerks who printed the ballots therein?

Mr. EDWARDS. We will come to that in the discussion of the legal points. I am reminded that my time is up. I did not think anything about the time running so fast. I want to get the facts before the committee, and I think they can readily understand the legal points.

Mr. CURRIER. Have you discussed the action of the State committee in connection with this matter?

Mr. EDWARDS. No, sir.

Mr. CURRIER. That may be discussed by your counsel.

Mr. EDWARDS. The State committee met on Friday night and did not act, as I contend.

Mr. CURRIER. The Friday before election?

Mr. EDWARDS. They met without any record before them, without any evidence before them, and without any hearing. They amended the rule. The rules themselves stated that they must give a week's notice that there was no objection. The evidence will show that there was objection, but that they amended the rules and said that they were the governing authority.

Mr. TALBOTT. One thing I would like to be clear about. After the certificate was revoked, the certificate which had already been accorded Doctor Hunter, of course that made you the legal candidate?

Mr. EDWARDS. Yes, sir.

Mr. TALBOTT. I want to know for a certainty whether or not the officials in these five counties who had charge of the printing of the ballots and the circulation to the various polling places had information in time to put your name on the official ballot?

Mr. EDWARDS. They did. Pulaski County, the big county where Doctor Hunter gets fifteen or sixteen hundred votes, the county that has four or five thousand Republicans, is seven or eight hours run from Louisville. They had the ballots there in ample time. The fact is, and I think the evidence shows it, that the clerk, who is Mr. May, never printed and prepared any other ballot excepting those with Doctor Hunter's name on and did not pay any attention to the petition of the secretary of state. That is true in all the five counties.

I think the facts are that I was nominated. I think the facts are that I was the only candidate that was certified by the legal authority, the secretary of state, as being the nominee. I insist that no other ballot printed with any other man's name under the log cabin was a legal ballot and that it was not printed by authority of law, but in violation of law. And I insist that the clerk who printed it committed a felony under the laws of Kentucky, and that he could not make a legal ballot in violation of the law, and that a man could not receive a legal vote upon a void ballot. That is our contention that will be argued by our lawyers. That is the statement of the facts. I do not care to take up the time of my attorney any longer, and I thank you very kindly for your attention.

STATEMENT OF W. R. RAMSEY, REPRESENTING HON. W. GODFREY HUNTER.

Mr. RAMSEY. Mr. Chairman and gentlemen of the committee, the Eleventh Congressional district of Kentucky is composed of 19 counties, which I will name: Adair, Bell, Casey, Clay, Clinton, Cumberland, Harlan, Jackson, Knox, Laurel, Leslie, Letcher, Monroe, Owsley, Perry, Pulaski, Russell, Wayne, and Whitley. It is about 350 miles from one end of the district to the other. In many of the counties there are no railroads, no telegraphs, and no telephones. At the

regular election in 1902 the Hon. Vincent Boreing was regularly elected for the term ending October, 1905. In September, 1903, he died. I wish you would indulge me while I may fully, in regular order, state what was done upon the death of Judge Boreing. By following the order in which successive acts were done you will be enabled to see through this whole proceeding.

On the day that Judge Boreing died, and in his home town, the day of his funeral, this record shows that J. Sherman Cooper, the chairman of that district was there; that Judge J. H. Tinsley, the United States district Attorney was there; that Mr. Edwards was there; and that on that day the subject of Mr. Edwards's candidacy was discussed. It shows by this record that this same J. Sherman Cooper, before the governor of Kentucky had issued a proclamation calling for an election to be held in that district, that this Mr. Cooper, the chairman of the Republican party in that district, Mr. D. C. Edwards, the candidate, Judge J. H. Tinsley, United States district attorney, and Mr. J. N. Sharp, the commonwealth's attorney of that district that was embraced in the Eleventh Congressional district, Mr. A. P. Siler, the law partner of Mr. Sharp, Mr. William M. Catron, the postmaster at Somerset, and Mr. Edwards, the circuit clerk of Somerset, Pulaski County, held a secret meeting in Junction City, outside of the district, in the night time, to confer about what should be done in the interest of the Republican party of that district. No other candidate was invited and no other Republican was invited. But there, outside of the district, and in the night time, they held a caucus, at which J. Sherman Cooper determined that he would not, from his home, Somerset, but from Junction City, outside of the district, make a call on the 24th day of September for a committee meeting of that district to be held at Junction City, outside of the district, on the 28th day of September, and those notices were mailed from Junction City, Ky. Mr. Edwards was there in that secret caucus.

The committee met at Junction City on the 28th day of September. When they got together they said: "Why, this meeting is certainly premature; the governor has not called any election, and what have we to take for a basis? How do we know when he will call an election, if he ever calls one?" But they assumed without any authority whatever that the governor would call a special election to fill the vacancy on November 3, the day of a regular election. And they wanted a convention held at once to nominate a candidate. Well, the committee, at the conference, decided that Mr. Cooper was premature in calling the committee together; that no action should be taken until the governor had issued his proclamation fixing the time for holding the election to fill this vacancy. After that, Governor Beckham, I believe, on the 29th or 30th of October, called a special election for the 10th day of November, 1903. This Mr. Cooper, the chairman of the district, issued a call for a meeting of the district committee, to be held at Junction City, this same place, on the 5th day of October, 1903.

Now, gentlemen, I do not intentionally mean to misrepresent or misquote any of the evidence in this case, but the evidence in this case shows that before that committee meeting, which was held at Junction City on October 5, there were a number of persons who had procured proxies from the different counties, and that the regular chairmen were not present, but were represented by proxies only, and that Mr.

Edwards had procured from the county chairman of Owsley County a proxy in the name of James Yaden, and when that proxy was presented before the committee it was held by Judge James H. Tinsley, and the name that was originally in that proxy had been erased and Judge Tinsley's name had been inserted in there, and that in the handwriting of Mr. Edwards himself, and Mr. Edwards had gotten up there and was forced to admit that he had put it in there himself.

Mr. EDWARDS. By authority of a letter authorizing me to do so.

Mr. RAMSEY. You did not produce the letter there.

Mr. MILLER. Do you take the position that the convention which met at Middlesboro was not legally called?

Mr. RAMSEY. No, sir; I do not. I stated a while ago that while I might go into detail somewhat I would ask the committee to follow me successively along the acts which were perpetrated by certain gentlemen, in order to show you that the purpose was not to ascertain fairly who was the choice of the people of that district for Congress, but to place before the people a man that is comparatively unknown in that district and that the people did not want.

The CHAIRMAN. If you will permit me, I do not see that that has any bearing upon the case at all. I would say, so far as I am personally concerned, that it is a rather unusual proceeding. I don't know that this has ever been done, to go back behind a nomination. It is alleged here that the governing authorities decided that Mr. Edwards was nominated, and that notwithstanding that fact through some connivance of Doctor Hunter, his name and not that of Mr. Edwards, either by fraud or collusion, was placed improperly on the ballot in five counties. That is a matter which probably the committee might consider.

Mr. TALBOTT. The law of Kentucky provides that the secretary of state shall declare who is the nominee.

The CHAIRMAN. But all these little matters about who had proxies in the convention—we don't care anything about that sort of evidence, in my opinion.

Mr. RAMSEY. Very well, sir. I would like to call your attention to this fact: At that time Mr. Edwards and his friend, by a resolution that was offered by Judge Tinsley and advocated by him at a meeting that was held on the 5th day of October—he offered a resolution that mass conventions be held in the different counties on the 7th of October, and that the district convention be held at London on the 9th day of October in the Eleventh Congressional district. That is what they advocated there. That is what Mr. Edwards wanted, and that is what his friends advocated.

Mr. CURRIER. Some of these gentlemen think that under the law, or under the regulations of the party, this nomination was to be made thirty days in advance of the election. Was that for the purpose of having these mass conventions?

Mr. EDWARDS. That is the only purpose.

Mr. RAMSEY. But this is the law of Kentucky. It shows that they labored under a misapprehension.

Mr. CURRIER. That is not a fraudulent scheme—the fact that they were laboring under a misapprehension.

Mr. RAMSEY. Section No. 13 of the law of Kentucky says that certificates and petitions of nominees filed with the secretary of state shall be filed not more than sixty days and not less than thirty days

before the day fixed by law for the election of the person in nomination. That section refers to a regular election. In this case it was a special election and no day was fixed by law, but it was fixed by proclamation of the governor, and the governor knew when it would be.

Mr. TALBOTT. If the governor had a legal right to make the proclamation, does not that make it as legal as any day fixed by law?

Mr. RAMSEY. Certainly it is legal when it is fixed by the governor, but not fixed by law.

Mr. CURRIER. Was this resolution that you speak of adopted?

Mr. RAMSEY. This resolution was voted down.

Mr. CURRIER. Then why go into it, if there was no bad faith?

Mr. RAMSEY. We take the position that there was bad faith.

Mr. CURRIER. As I understand it, they were laboring under a misapprehension.

Mr. MILLER. Why raise the question as to the illegality of the organization of the convention?

Mr. RAMSEY. I think if you will hear me through you will see in what way they are connected, if they are connected. If they are not connected, of course that might have no bearing upon the case. I am not making all of my speech at once.

Now, gentlemen of the committee, anyhow that was voted down and the convention was called to meet at Middlesboro on the 17th day of October. Now, the county conventions were provided in the different counties to be held on the 15th day of October, in all the different counties of this district. Now, you will notice from reading the charges of the grounds of the contest as set up by Mr. Edwards that he relies upon five grounds, bases his contest upon five grounds. Four of them, I take it, it is unnecessary to say anything about because in the brief that has been filed in behalf of Mr. Edwards no reference is made to them and they do not seriously contend that any of them have been sustained by any evidence introduced in this case. For that reason I shall address myself principally to the question as to whether or not Mr. Edwards was the legal nominee of the Middlesboro convention.

Mr. BYRD. Did the party authority in that district certify that Edwards was the nominee of the Republican party? Did they do that or not?

Mr. RAMSEY. We contend that they did not.

Mr. BYRD. I should say that if that question is settled, why go behind that at all?

Mr. RAMSEY. I think it would not be unfair to discuss the point that Mr. Edwards discussed before the committee.

Mr. WEEMS. There is one aspect of the case that I think might be discussed materially, and that is the claim that Doctor Hunter fraudulently attempted to win election. Mr. Edwards attempted to show, when he started out, that he was the regular nominee of the party at the Middlesboro convention; that Doctor Hunter knew it; and he has gone into the proceedings of the Middlesboro convention to show it. It would be well to show that this controversy which divided the district, and divided these two men, was a bona fide controversy and not fraudulent. I suppose these two men believed they were right, fighting for what they believed to be right. Is it not competent for the contestee to go into the history of the Middlesboro convention?

The CHAIRMAN. We have allowed the gentlemen a certain time, and of course it is proper for them to occupy it in the discussion of anything they see fit. No member would desire to limit them, except it was thought that there were certain points that would be more material and that we would care more to be informed upon.

Mr. TALBOTT. I want to know more particularly than anything else whether or not these five clerks in these counties had notice that the secretary of state had substituted Mr. Edwards as the regular nominee of the party. I will be very frank with you. I hold that every ballot in these five counties with anybody else's name on was not a legal ballot.

Thereupon, at 12 o'clock noon, the committee adjourned to meet at 8 o'clock p. m. to-day.

AFTER RECESS.

The committee reassembled at 8 o'clock p. m., pursuant to adjournment, Hon. Marlin E. Olmsted in the chair.

ARGUMENT OF MR. W. R. RAMSEY, COUNSEL FOR HON. W. GODFREY HUNTER—Continued.

Mr. RAMSEY. Mr. Chairman and gentlemen of the committee, when the adjournment was had to-day I had said something with reference to the committee meeting at Junction City, not for the purpose of attacking the legality of that meeting, but simply to show what I conceived to be the motive back of the action taken there at that time.

There is no dispute between Doctor Hunter and Mr. Edwards as to the legality of the call made at Junction City. I will now refer to the proceedings at Middlesboro, the place fixed by the party call for the convention to be held. To show you that the party authorities did not intend for the convention to be held in London, a motion was made before the district committee at Junction City that the convention be held in London, and it was voted down, and the place of meeting fixed at Middlesboro.

When the convention was called to order at Middlesboro by Mr. Cooper, the district chairman, every county in the district answered to the roll call and was represented.

I desire to get this fully before the committee. I make this statement, and an examination of the record will bear me out: That of the uncontested, undisputed votes in that convention at Middlesboro Doctor Hunter had a majority from the time it was called to order. This statement is supported by a witness introduced by the contestant, Mr. J. G. Yoden. See question 118, page 645 of record; also by the testimony of Mr. Morrow. See question 58, page 300 of record. It can be demonstrated by figures which I will now read to you, that Doctor Hunter did have, from the very moment the convention was called to order, a majority of the uncontested delegate votes. There were 19 counties represented. The following uncontested votes were for Doctor Hunter, viz: Adair County, 17 votes; the county of Clinton, 11 votes; the county of Cumberland, 12 votes; the county of Monroe, 17 votes; the county of Russell, 12

votes; half of the vote of Harlan County, 8 votes, and a part of the vote of Bell County. Anyhow from one-half to 13 of the 21 votes of Bell were for Doctor Hunter, in preference to Edwards. This gave Doctor Hunter 90 votes about which there was no dispute.

Mr. Edwards had the county of Clay with 19 votes, the county of Owensley with 11 votes. He had half of Harlan County, with 8 votes, and he had 8 votes in Bell County, which makes a total of 46 votes. Those were all the uncontested votes he had. Mr. Stephens had the county of Whitley, with 36 votes, instructed for him, about which there was no contest. Doctor Young had Wayne County, with 16 votes, about which there was no contest. Mr. Johnson, from Perry County, had 10 votes. Leslie County instructed for Ramsey, with 12 votes. Casey County had no credentials. That county was entitled to 18 votes, but no person presented any credentials whatever from that county. Giving Edwards the 18 votes of that county, his total vote would then have been but 64.

So, then, summing up, Doctor Hunter had 90 votes with 5 counties and parts of two other counties uncontested. Mr. Edwards had two counties uncontested, or we may say three with Casey County, and parts of two other counties, with a total of 64 votes. Whitley County was for Stephens, with 36 votes, and the others were as I have named. Now, the other counties—Jackson, Knox, Laurel, Letcher, and Pulaski, five in number—were contested. I want to call your attention to this fact. These five contested counties, with 110 votes, were permitted by the chairman of that convention, Mr. Cooper, to vote on all questions coming before the convention and to participate in the temporary organization. So that on the question of temporary chairman 110 contested votes were permitted by the chairman to be cast; 92 of said votes were in favor of Edwards and 26 anti-Edwards.

The CHAIRMAN. Not to interrupt unduly, but for information, I would like to ask, Did those persons that were permitted to vote, but whose seats were contested, have, *prima facie*, the right to sit in the convention? They had some sort of credentials.

Mr. RAMSEY. I have just said that the county of Casey had no credentials at all—

The CHAIRMAN. I understand about that.

Mr. RAMSEY. And yet Casey County was permitted to cast 18 votes for Mr. Edwards.

The CHAIRMAN. As to the other counties?

Mr. RAMSEY. In the other counties the proof shows that the chairman said he would recognize those counties that had credentials signed by the county chairmen. But that is not what the rules provide. We have a provision under the rules and regulations of the party in Kentucky which says what shall be done in case of contested delegations and—

The CHAIRMAN. Ordinarily the man who holds the credentials, although his seat may be contested, acts until his contest may be disposed of adversely to him. What I wanted to ascertain was whether there was any special cause in this case so that that rule ought not to obtain.

Mr. RAMSEY. Whenever there is a contest and two sets of credentials, the rule is as follows, viz (I read from the Rules of the Republican Party in Kentucky, section 28, pages 18-19): "Whenever there is a contest as to the right to a seat in any convention, that delegation

selected by the convention called to order by the regular official of the party, pursuant to the official call for said convention, shall be admitted until the contest is settled, and may vote on all questions except as to its own right to a seat in the convention in which it is sitting." Now, the chairman did not adhere to that rule. He said that he would recognize the delegations which presented credentials with the name of the county chairman signed to them. In other words, he left it in the power of one man in each of these counties to decide which delegation of that county should be seated in the convention.

Mr. MILLER. Whose duty is it to call that county convention or this mass meeting that is held?

Mr. RAMSEY. It is now the duty of the county chairman to call it to order.

Mr. MILLER. Why would it not be proper for the county chairman of this convention, even under your rule there, to recognize the delegation that was certified by the chairman of the county convention, if the chairman of the county committee calls that convention to order? Is he not one and the same person?

Mr. RAMSEY. It is customary where these county conventions are held for them to be called together by the county chairman, and then an organization is effected, such as the members of the party present desire to make, and after the organization is perfected and delegates have been selected, the credentials are usually signed by the county chairman and by the secretary of the county committee.

Mr. WEEMS. Does the county chairman usually preside over the convention?

Mr. RAMSEY. Not at all. He simply calls it to order.

Mr. LANDIS. You select your delegates by mass convention?

Mr. RAMSEY. Yes.

Mr. LANDIS. In all of these counties?

Mr. RAMSEY. In all of these counties.

The CHAIRMAN. Does not the rule say the person who calls the convention to order?

Mr. RAMSEY. That is exactly the point I referred to. It says that he shall recognize, not the credentials that are signed by the county chairman, but he shall recognize the credentials of that delegation selected by the convention called to order by the regular official of the party. That was not the ruling of Chairman Cooper. Mr. Cooper, the district chairman of the Eleventh district, passed upon his own credentials from the county of Pulaski; he acted as teller in the Pulaski County convention; as teller he reported to himself as county chairman; as county chairman he made out a list of delegates for the district convention at Middlesboro. He passed upon his own case by signing his own credentials as county chairman; reported to himself as district chairman; as district chairman passed on his own credentials, and then seated four contested delegations that were in favor of his candidate for Congress, Mr. Edwards. That is exactly what was done, and it is shown here by this record. He permitted every one of these delegates whose seats were contested to vote in that temporary organization.

What else did he do? When Mr. Sharp was placed in nomination for temporary chairman and Mr. Denham was the opposing candidate, the vote was taken—the counties were called. The vote shows, according to the record here, that Mr. Sharp received, I believe,

about 183 votes and Mr. Denham 160 votes. There was a difference of about 23 votes.

Now, then, as I have said, Casey County was permitted to vote without any credentials whatever. That county voted for Sharp. There are 18 votes accounted for that were illegal.

Mr. CURRIER. Is that the county where one man discovered after he had reached the floor that he had lost his credentials?

Mr. RAMSEY. He stated he had lost them.

Mr. EDWARDS. Did not Doctor Hunter state that he knew this gentleman was an accredited delegate?

Mr. RAMSEY. No; some witness may have stated that.

Mr. CURRIER. Did it not appear by the record that apparently before this man discovered that he had lost his credentials it was known that his credentials were lost?

Mr. RAMSEY. This man got up and stated in the convention that he had the credentials from that county, but at that time they were lost or stolen, and he never did produce any, nor did he show that he was a regular accredited delegate in any manner whatever from that county.

Mr. CURRIER. Does not the record show that Doctor Hunter's son, before this man apparently discovered that he had lost his credentials, reported that the credentials were lost?

Mr. RAMSEY. I did not understand your question.

Mr. CURRIER. Does not the record show that before this man discovered that he had lost his credentials Doctor Hunter's son had notified somebody that those credentials had disappeared and asked him to challenge this man's right to vote? Is not that shown in the record? Is there not some testimony of that kind in the record?

Mr. RAMSEY. It appears that something of that kind occurred, but just at what time I am unable to state.

The CHAIRMAN. Is it claimed or proved that they were not elected delegates to that convention, or that anybody else was?

Mr. RAMSEY. There was no evidence heard on it at all.

Mr. BYRD. Was their right to participate or cast a vote in that convention not challenged at the time they did it?

Mr. RAMSEY. The question was raised right there and then that they did not have any credentials. A man got up and said so at the time.

Mr. BYRD. Was his right to cast a ballot contested at the time?

Mr. RAMSEY. You will notice that the chairman said that he recognized as entitled to seats delegates presenting credentials signed by the county chairmen. He did not do it in that case.

Mr. BYRD. When this man offered to vote was his right to vote challenged by anybody?

Mr. RAMSEY. Yes; it was. Eighteen votes; these 18 votes were cast for Mr. Sharp for temporary chairman. The friends of Mr. Edwards claim that the vote for temporary chairman was a test vote of the strength of the two leading candidates, Hunter and Edwards. You can examine this record and you will find by witnesses introduced by the contestant, as well as the contestee, that this is not true. Mr. Davis, from Bell County, a witness introduced by the contestant, says that he did not regard that as a test vote. This is also shown by Mr. Morrow's testimony. It is also shown by Mr. Yadon's testimony, and by several other witnesses, that the vote taken for temporary chair-

man was not a test vote of the strength of the two leading candidates at all—

Mr. CURRIER. Do you regard the vote for adjournment as a test vote?

Mr. RAMSEY. I do not.

Mr. CURRIER. Did Doctor Hunter's friends vote for that?

Mr. RAMSEY. For the adjournment?

Mr. CURRIER. Yes.

Mr. RAMSEY. The figures, as declared by the temporary chairman, stood 223 for, against 123. Now, then, in making up this number, 118 contested votes were permitted to be cast, besides the 18 votes of Casey County.

Mr. CURRIER. Do you regard that as a test vote?

Mr. RAMSEY. I do not, in any respect. It was in no sense a test vote, not in the slightest. You will notice that the contention is made here that it was a scheme of Doctor Hunter's to get up trouble in the convention and to bring about an adjournment; and in order to carry out the plan, it is said that the motion to adjourn to London was made by Mr. Eversole, a delegate from Perry County. If you will read this record you will see that Mr. Eversole at the time the motion was made was standing somewhere near the platform, and that Mr. Edwards was standing near him, and that just before the motion was made Mr. Edwards leaned over and seemed to be whispering something to Mr. Eversole, and immediately thereafter Mr. Edwards helped Mr. Eversole up on the platform, when he made the motion. That is sworn to by Mr. Morrow, from Pulaski County.

Mr. EDWARDS. And disputed by many other good witnesses.

Mr. RAMSEY. Mr. Thomas D. Tinsley, from the county of Knox, swears that he saw Mr. Edwards help Mr. Eversole up on the platform at the time.

Mr. EDWARDS. Who swears to any communication—I remember the testimony about helping him up on the platform.

Mr. RAMSEY. Mr. Morrow, from the county of Pulaski, and if you desire, I will turn to it and read it to you.

Mr. CURRIER. I do not think you need turn to it if it will divert you from your argument.

Mr. RAMSEY (reading from testimony of Edwin P. Morrow, at p. 303, beginning with question 110):

110. Q. Did you or not see anything of Mr. D. C. Edwards at the time said Eversole made that motion? If so, what was he doing?—A. Just prior to the time the motion was made I saw Mr. Edwards on the left-hand side of the hall, in the aisle next to which Mr. Eversole was sitting. Mr. Edwards was facing the floor in a disturbed and agitated manner. He came to Mr. Eversole and leaned over and seemed to be whispering to him. But whether or not he was I can not say. Immediately afterwards the motion to adjourn was made.

111. Q. Did you see Mr. Eversole's position in the hall when he made that motion?—A. I did.

112. Q. How near to him was the said D. C. Edwards?—A. Very close to him.

113. Q. What was his manner at that time?—A. He was urging him to continue in an effort to have the motion put to the house.

Thomas Tinsley swore he saw Mr. Edwards help Eversole up on the platform. I refer to this, not that it has any particular bearing, but because Mr. Edwards was back of the motion to adjourn to London. It is very remarkable, if it be a fact, that Mr. Edwards there in the town of Middlesboro, the place the party authorities had

fixed for the convention to be held, had a clear majority of the delegates present in his favor he and his friends should want to take the convention to London, his home town, 40 or 50 miles away from there. Why go to London? If there was such disturbance that they could not hold a convention in an orderly way, there was Barboursville, between Middlesboro and London; there was Pineville, the county seat. Why pass Barboursville? Why pass Pineville, and why go to London, where Mr. Edwards resided at that time?

Mr. EDWARDS. That town is a pretty good town.

Mr. RAMSEY. Yes.

Mr. MILLER. Did Doctor Hunter and his friends discuss the right of that convention to adjourn?

Mr. RAMSEY. They did. They raised the question that it had no right to adjourn, and it did not have any right to adjourn, according to our view, because there had never been any action of the body fixing the legal membership of the convention. There never had been any action of the convention showing who was entitled to vote in it. The credentials of no delegate had been passed on in that convention except by the district chairman, Mr. J. Sherman Cooper. We contend that before a permanent organization was had, and before the legal membership of the convention was fixed and determined, the convention could not adjourn to a place other than that fixed by the party call for it to be held. Not only did Hunter's friends so contend, but they contended also that the motion to adjourn to London was out of order. Why? Because, immediately preceding that, a motion had been made to adjourn, and said motion had been put and voted down, and no intervening business had been transacted, and it was contended as a matter of parliamentary law that the motion to adjourn to London was out of order.

Mr. CURRIER. Had discussion intervened between the two motions?

Mr. RAMSEY. I have just said that no intervening business had transpired.

Mr. CURRIER. I asked if discussion had intervened.

Mr. RAMSEY. It is claimed—

Mr. CURRIER. Discussion is business.

Mr. RAMSEY. By some witnesses introduced by the contestant it is claimed that there was discussion, but we introduce witnesses here to show that immediately, when no business had been transacted, when nothing had intervened, the motion was again put to adjourn, and the point of order was raised at the time, but the chairman overruled the point of order.

Now, I take it that it is not necessary to take up any time discussing this point as a matter of parliamentary law.

What else occurred there? After Mr. Sharp was elected temporary chairman he proceeded, by motion, to appoint committees—the usual committees on credentials, organization, permanent organization, rules and order of business. There was nothing to be done in the convention until some of these committees could report. They took a recess for dinner. After dinner Major Wood, a Republican speaker of the State, made a speech, and during the afternoon there was not very much business done until the report of the committee on rules and order of business was made. Now, I want to call attention to this fact, that when the committee on rules reported it recommended Reed's Parliamentary Rules to govern the convention. The

committee also recommended that in disposing of contests the counties be taken up in alphabetical order and disposed of, and each case disposed of separately before the other was taken up. There was an amendment offered by Colonel Colson, who was formerly a member of Congress from that district, to this effect, that instead of taking up the counties in alphabetical order, that the county having the largest vote be first taken up and disposed of, then the next largest, and so on down through the list.

The CHAIRMAN. By votes you mean the largest number of delegates?

Mr. RAMSEY. Yes; the largest number of delegate votes. That would have taken up the county of Pulaski first, because it had 41 votes—more than any other county there. Mr. Kash, an Edwards delegate from the county of Clay, moved to lay that amendment on the table. A vote was taken and it was carried, so the chair decided. The point of order was made that as the amendment was laid upon the table, so the original proposition was carried with it.

Mr. MILLER. A report of the committee on order of business?

Mr. RAMSEY. That the amendment to the report of the committee having been laid upon the table, also carried the report with it.

The CHAIRMAN. In other words, you say that while they had Reed's rules, they did not have Mr. Reed in the chair.

Mr. RAMSEY. Yes, sir. That point of order was raised, and it was passed upon. Here is a copy of Reed's Parliamentary Rules. I read from section 114, pages 82-83 (reading):

To lay on the table.—This motion is practically a motion to suspend consideration of a question during the pleasure of the House. It carries with it all questions connected with the several questions on which it is moved. If it be moved on the main question, then all the amendments go with it. If it is moved on the amendments, then the main question goes on the table also.

Mr. CURRIER. Mr. Ramsey, suppose that all to be so, who was hurt?

Mr. RAMSEY. How was that?

Mr. CURRIER. I say, suppose that to be true, who was hurt by it? If they had the vote to table it, they had the vote to beat it, did they not?

Mr. RAMSEY. It showed that the chairman, in the face of parliamentary law—it was read to him there—did not intend to see that fair play was done between Republicans, one entitled to as much consideration as another, and it showed that his ruling was arbitrary. It was not ignorance, because the law was read to him, and not only read to him, but he had an opportunity to consult the books; and in the face of the law he made said arbitrary ruling and would not correct it, and when an appeal was asked from his decision he refused to give it.

Mr. CURRIER. Let me ask if your speech on that parliamentary question was not made after he had ruled.

Mr. RAMSEY. The point of order, sir, was made immediately when that question came up. It was raised by Colonel Colson; it was raised by others. You are referring to myself in regard to the matter. That was after the point had already been made by Colonel Colson. I referred the chairman to the rules that we relied upon, and I also challenged any man there to show that my position was not correct. After that the chairman arbitrarily refused to correct or change his ruling in any way whatever.

Mr. CURRIER. I ask for information, but as I remember the record you read from Reed's rules, and made your speech after the chairman had ruled, not before.

Mr. RAMSEY. The point of order was up at that time. I referred the chairman to Roberts's Rules of Order and read from that book. The rule laid down in Reed's Parliamentary Rules is the same on that subject.

Mr. CURRIER. There is no question, of course, about the general parliamentary rule.

Mr. RAMSEY. That is not all. If I caught the force of the gentleman's question relating to what difference the ruling made, and if he means to say that if you have parliamentary rules to govern an assembly that it does not make any difference whether you go by them or not, then of course, that question—

Mr. CURRIER. I did not make any such remark as that. I asked what practical difference it made to the gentlemen in that convention in that particular case whether they were beaten on a motion to lay on the table or beaten on the amendment, and apparently if they had the votes to lay it on the table they had the votes to defeat the amendment.

Mr. RAMSEY. If you had been present you could have seen at once the purpose of that ruling. That course was pursued a little further by the chairman. After the committee on credentials reported a motion was made and a resolution was offered by Mr. Yarberry, from the county of Adair, that the rules be suspended and that the contest of the county of Pulaski be taken up and disposed of first. The chairman by his arbitrary ruling permitted the county of Pulaski, the county that had more votes than any other county in the district, and whose right to a seat in that convention was contested, to cast 41 votes on that very proposition—on its own case and against Mr. Yarberry's motion. That was why he ruled as he did before, when he held that a vote to lay the amendment on the table did not carry the original amendment with it. He had a purpose in that ruling.

Mr. WEEMS. Was he from the same county?

Mr. RAMSEY. Yes.

Mr. EDWARDS. That was Mr. Sharp.

Mr. RAMSEY. Mr. Sharp made the ruling. I had in mind Mr. Cooper when I answered the question addressed to me. Mr. Sharp is from Whitley County. Is it not apparent to every member of this committee as to what was the purpose of this ruling? Mr. Sharp knew that if he could take the 41 votes of Pulaski County, which were contested, and use them in voting on every proposition that came up in behalf of Mr. Edwards, then it would be an easy matter to dispose of all the contests and directly affect the vote in that county. Jackson County only had 18 votes; Laurel County had 22 votes; Knox County, 26 votes; Letcher County, 11, and Pulaski County, 41 votes. "Now, we will hold Pulaski and let Pulaski cast 41 votes on the contest of every other county until we get our delegates seated in the other contested counties, and then we will let them come in and help seat Pulaski!" There was the force of it—

Mr. MILLER. At that stage of the convention the convention had already adopted the report of the committee on order of business.

Mr. RAMSEY. We claim not; we claim that they had tabled it.

Mr. MILLER. The vote had been declared by the chairman as carried. A motion had been made to adopt the order of business as reported by the committee or to adopt the report of the committee, and the chairman decided that the motion had carried and that the order of business had been carried.

Mr. RAMSEY. Yes.

Mr. MILLER. Afterwards the committee on credentials, as I understand, reported; and when the committee reported some one moved to suspend the rules of the convention.

Mr. RAMSEY. Yes.

Mr. MILLER. Which would have required two-thirds vote.

Mr. RAMSEY. Yes.

Mr. MILLER. Now, if they did not have enough votes to defeat the motion to adopt the order of business how could the friends of Doctor Hunter claim that they then had two-thirds of the convention, which was necessary to undo what had been done?

Mr. RAMSEY. They did not claim that.

Mr. MILLER. If they did not have two-thirds vote they could not have suspended the rules already adopted by a majority.

Mr. RAMSEY. We do not claim that.

Mr. MILLER. But you claim that a motion was made to suspend the rules.

Mr. RAMSEY. Yes; and we claim that when the motion was made to suspend the rules, and the chairman ruled upon that question, mind you, he ruled, when the county of Pulaski was called, that Pulaski had a right to cast 41 votes on that question. The friends of Doctor Hunter claimed that Pulaski County had no right to vote on that question, because said proposition directly affected its right to a seat in the convention; but the chairman ruled otherwise and permitted the 41 votes to be cast on that question.

The CHAIRMAN. That is often done. I have seen a man in the Pennsylvania senate retain his seat by his own vote—a man who just had a majority of one. It is perfectly legal.

Mr. RAMSEY. That may have been legal in Pennsylvania, but according to the rules of the Republican party in Kentucky that was not legal, because a delegate has no right to vote on a question as to his own right to a seat in the convention in which he is sitting.

Mr. EDWARDS. But that never came before it.

Mr. MILLER. If they had no right to vote on this question, did they have any right to vote on the adoption of the report of the committee on rules and order of business?

Mr. RAMSEY. Under the rules and regulations of the Republican party in Kentucky Cushing's Manual is adopted. That work, section 8, page 5, referring to the question of membership, says:

When a question arises involving the right of a member to his seat such member is entitled to be heard on the question, and he is then to withdraw from the assembly until it is decided; but if, by the indulgence of the assembly, he remains in his place during the discussion he ought neither to take any further part in it nor to vote when the question is proposed; it being a fundamental rule of all deliberative assemblies that those members whose rights as such are not yet set aside constitute a judicial tribunal to decide upon the cases of those whose rights of membership are called in question. Care should always be taken, therefore, in the selection of the officers and in the appointment of committees to name only those persons whose rights as members are not objected to.

And yet, after Mr. J. Sherman Cooper had his law partner, Mr. Sharp, installed as temporary chairman of the convention, Mr. Sharp appointed as chairman of the committee on credentials R. Boyd, jr., from the county of Laurel, whose seat was contested, to head and sign the report of the committee on credentials, a committee which was to determine the right of the members in said convention to be seated. Here is his report, signed R. Boyd, jr., as chairman:

The convention had been proceeding without confusion until the arbitrary ruling of the chairman was apparent to everybody. His unfairness was clearly shown, and he declared an adjournment to London. I would like to call the attention of this committee especially to what transpired at London on the following Monday, to show you that the action of the delegates who acted or participated in the convention at London was not legal and did not represent the wishes of the Republicans of that district.

Take the deposition of Mr. Yaden, who was a witness introduced for the contestants. Mr. Yaden says that there were 6 counties that were not represented at all in the meeting at London—Adair, Clinton, Cumberland, Wayne, Russell, and Monroe.

There were 6 counties that were not represented at all by any delegates. The county of Whitley at Middlesboro had 36 delegates. At London there were only 2 delegates from the county of Whitley.

Mr. CURRIER. Did you not have instances at your Middlesboro convention where you only had one or two men present out of the entire delegation? I suppose the chairman cast the entire vote anyway?

Mr. RAMSEY. Yes, sir; that may have been true, but that is not the point I am trying to impress upon the committee. It is this: Take the county of Bell. In that county there were 21 votes. They had been divided in the Middlesboro convention. One witness says they were about 10 to 11—10 for Doctor Hunter and 11 for Mr. Edwards—and on some propositions they were divided in the ratio of 13 to 8. At London, on the Monday it is claimed Edwards was nominated, the man who was there from Bell County, instead of casting the vote in the proportion it had been cast at Middlesboro, cast the whole 21 votes of Bell County for Mr. Edwards.

Take the county of Whitley. The county of Whitley had been divided 23 to 13. But the two delegates at London, instead of casting the vote in the proportion it was cast at Middlesboro, cast the whole 36 votes of Whitley County for Mr. Edwards.

Take Harlan County. At Middlesboro the vote had been 8 for Doctor Hunter and 8 for Mr. Edwards. The man representing that county at London cast the whole 16 votes of Harlan County for Mr. Edwards.

There is the difference it made in the London convention.

Mr. CURRIER. Were these votes represented in the convention after Mr. Edwards's friends withdrew at Middlesboro?

Mr. RAMSEY. Yes.

Mr. CURRIER. How did they vote there; solidly for Doctor Hunter?

Mr. RAMSEY. I presume they did where they were for him.

Mr. WEEMS. Is there any testimony as to the actual number that attended the conventions? There were 278 votes at London, and probably 288 at Middlesboro, according to some testimony, the testimony of Mr. Morrow as to what occurred at Middlesboro, to the testimony of Mr. Rice, who was chairman of the convention after the

split there. I refer you to the testimony of Mr. Phelps, who was the secretary of the meeting after the split, and I refer you to the testimony of Mr. Sharp, and to the testimony of Mr. Bowling, the secretary who went to London. He gives the total vote cast, not the vote by counties; and, strange to say, Mr. Sharp, who was the temporary chairman of the convention at London, says that there were 261 votes in that convention, and yet Mr. Edwards says he was nominated by 278 delegate votes. That is a very strange thing that is not accounted for here. Another thing, take the testimony of Mr. J. G. Yaden, who was a witness for the contestant in this case. He explains how that vote was cast. He shows it to you exactly. He gives it by counties—how the vote was cast at London. And what did they do? When they got down there at London every vote that was taken on every proposition up to the time the nominations were made was unanimous, unanimous on every question. How was that? They did not even have a majority report to go upon; they did not have the minority report. Why? Because they left them on the table at Middlesboro, and Mr. Rice and Mr. Phelps had the majority and minority reports and took them up and passed right on with the business of the convention. The Edwards men retired from the hall, and the convention, then presided over by Mr. Rice, went right on with the business where it was left off.

Mr. MILLER. Everything was unanimous there at the Middlesboro convention, was it not?

Mr. RAMSEY. No; it was not quite unanimous.

Mr. MILLER. It was not?

Mr. RAMSEY. No. I will tell you why. The Laurel County delegation, the contesting delegation from Laurel, was not recognized at all.

Mr. EDWARDS. The minority report of the committee on credentials did not recognize them, did it?

Mr. RAMSEY. Yes; to some extent. It recognized them to the extent that they were entitled to one-fourth of the vote of that county.

Mr. SULLIVAN. I want to ask a question to make a thing clear that is foggy in my mind. If the Edwards crowd by their unlawful act at Middlesboro had got control of the convention, why was it necessary for them to go to London?

Mr. RAMSEY. That is what I said a while ago; that there was no desire on the part of Doctor Hunter or his friends to go to London, but it was the Edwards people who wanted to go to London.

Mr. SULLIVAN. What motive can you assign for them wanting to go to London, if by their illegal manipulation of the county machinery they could accomplish the same result?

Mr. RAMSEY. I will answer it from this record. My view of it is that the reason—and it is stated here by Mr. L. K. Rice, who was the chairman, and I invite the careful reading of the testimony of Mr. Rice, because he said he was in favor of any of those counties; that he was for Doctor Hunter, as between Doctor Hunter and Mr. Edwards, but he was for a dark horse and was not wedded to any of the candidates. I think that they were afraid that the issue would be drawn at that time.

Mr. RAMSEY. He said that this was a pet scheme of the Edwards people, this adjournment to London, and the explanation that I give of that is this: You will notice from reading the record that Jackson County was on hand at the time of this pretended adjournment. It

was a matter of vital importance as to how the Jackson County vote went. It had 18 votes. One delegation was instructed for Edwards. The other delegation was instructed for Ramsey. Now, Whitley County had 36 votes. That county was instructed for Stephens. Part of the county of Whitley had been voting on some questions with the Edwards people; not all of it, but it was to the interest of Stephens, if he hoped to get the nomination, to seat the delegation that was anti-Edwards in the county of Jackson, because he could not hope to obtain the nomination if the Edwards delegation from Jackson should be seated.

Mr. CURRIER. Whom was the contending delegation for?

Mr. RAMSEY. Where, in Jackson County?

Mr. CURRIER. Yes.

Mr. RAMSEY. I have just said the other delegation from Jackson County was for Ramsey. Stephens could have no interest whatever in seating the Edwards delegation from Jackson County, because it would help him none whatever in his aspirations.

Mr. SULLIVAN. Did the Stephens forces remain in Middlesboro?

Mr. RAMSEY. Mr. Stephens remained there.

Mr. SULLIVAN. Did his friends, and the delegation?

Mr. RAMSEY. There were only two of them who went to London.

Mr. EDWARDS. You say that Mr. Stephens remained in Middlesboro?

Mr. RAMSEY. He remained there at the convention that was presided over by Rice.

Mr. MILLER. For whom did the Stephens people vote at the Middlesboro convention?

Mr. RAMSEY. When?

Mr. MILLER. After the adjournment.

Mr. RAMSEY. After the adjournment?

Mr. MILLER. Yes.

Mr. RAMSEY. It is claimed by some, as shown by the record, that the vote of Whitley County was cast for me.

Mr. MILLER. Solid?

Mr. RAMSEY. Yes; so stated.

Mr. MILLER. There was no question about any contest there. But did Jackson County vote?

Mr. RAMSEY. Yes, sir; they cast a vote for me. Why? Because the committee on credentials had seated them. That is why. They had their titles fixed.

Mr. SULLIVAN. If I may be permitted, I would like to finish on this line. Were there sufficient anti-Edwards delegates remaining at Middlesboro to have prevented the nomination of Edwards if the convention had not adjourned from Middlesboro?

Mr. RAMSEY. Undoubtedly there were. There is no sort of question about that. The figures here show it.

Mr. MILLER. That is, provided that you seated in that convention the men who were claiming the right to a seat and had not been recognized by the chairman of the convention.

Mr. RAMSEY. Mind you, there was not but one anti-Edwards delegation that was contested. That was the delegation from the county of Knox. It remained and participated in the convention. That was the only anti-Edwards county that was contested. It was instructed for H. C. Cole, but voted for me after the so-called adjournment.

Mr. SULLIVAN. How many delegates' contests were undecided at the time of the adjournment?

Mr. MILLER. All of them.

Mr. RAMSEY. All of them.

Mr. SULLIVAN. All of them were undecided at the time of the adjournment?

Mr. RAMSEY. All of them. Every solitary one. There was not one decided.

Mr. MILLER. After the adjournment they were all decided against Edwards and in favor of Hunter.

Mr. RAMSEY. I beg your pardon, but I said a while ago distinctly that after the split in the convention, so far as Laurel County was concerned, the committee reported against my vote in Laurel County and the convention sustained the report.

Mr. MILLER. Yes; in favor of Hunter and against Edwards.

Mr. RAMSEY (continuing). They unseated every delegate that I had in that convention.

Mr. MILLER. In favor of Hunter?

Mr. RAMSEY. Not at all.

Mr. MILLER. In favor of whom?

Mr. RAMSEY. In favor of nobody. There was nobody there at that time contending for it. The Edwards people had gone.

Mr. MILLER. Yes; and they did not vote for Edwards because he had gone to London.

Mr. RAMSEY. There was no vote cast from Laurel County because there was nobody to cast it.

Mr. BYRD. The record shows that. How did the vote stand?

Mr. RAMSEY. Eliminating those——

Mr. BYRD. Eliminating the contested delegates.

Mr. RAMSEY. You should deduct 118 votes cast on the question of adjournment. I mean that they were contested, and therefore should not vote.

Mr. BYRD. Out of those 118 how many voted against adjournment?

Mr. RAMSEY. I can not tell. There is no record showing that at all.

Mr. BYRD. In other words, I want to know this; how many of these delegates whose seats were being contested and who had not been regularly seated according to the rules of that convention voted for that motion to adjourn?

Mr. RAMSEY. As I said, there is no record which shows how the counties voted on the question of adjournment. They all voted one way or another, but what counties voted for it and what against it I am unable to say, because the record does not show.

Mr. BYRD. I am just asking for information.

Mr. CURRIER. How did you get your 118?

Mr. RAMSEY. I get it in this way——

Mr. CURRIER. I understood that there were only about 90 whose seats were contested in that convention?

Mr. RAMSEY. Only about 90?

Mr. CURRIER. Yes, sir.

Mr. RAMSEY. There were 92. That is, the 4 counties favorable to Edwards. The county of Knox had 26. That makes 118.

Mr. CURRIER. That was a county that voted for Hunter there.

Mr. RAMSEY. I am talking about the contested votes.

Mr. BYRD. How many illegal votes were cast for an adjournment? That is the question. How many of these who you said had no right to vote cast their votes to remove to London?

Mr. RAMSEY. As I said a while ago, all the contested counties voted.

Mr. BYRD. I know.

Mr. RAMSEY. Then I can only say this, that 92 of the Edwards contested votes were cast on the question of adjournment, and that 26—

Mr. BYRD. Voted against it?

Mr. SULLIVAN. Twenty-six for Hunter?

Mr. RAMSEY. I do not say that. I say that 26 in the Knox County delegation voted, but whether they voted for it I do not know.

Mr. CURRIER. They were Doctor Hunter's friends, from Knox County?

Mr. RAMSEY. They were instructed for H. C. Cole in the county of Knox. They were in the Middlesboro convention when the vote was taken, after Rice was made chairman, and the 26 votes of Knox County were cast solidly for Ramsey.

Mr. BYRD. I want to ask you this question. If a majority of those whose seats were not questioned in that convention voted for the transference to London, what objection can be made to it?

Mr. RAMSEY. That is what we can not show.

Mr. BYRD. I want you to answer that question, if you will. If a majority of the delegates in that convention who had a right to vote, voted to transfer the convention from Middlesboro to London, what have you against it?

Mr. RAMSEY. Because they were merely a temporary organization.

Mr. LANDIS. You claim that they had not any right to do it until they were permanently organized and had selected their officers?

Mr. RAMSEY. That is it, exactly; because they were operating under a party call.

Mr. LANDIS. And they were a temporary organization only?

Mr. RAMSEY. And they were not a permanent organization. Their legal membership had not been fixed at the time of this motion.

Mr. LANDIS. And they took a recess and no adjournment?

Mr. RAMSEY. That is exactly right.

Mr. LANDIS. They took a recess to hear the reports of committees?

Mr. RAMSEY. That is it; yes, sir. Now, I refer to the result of the convention in Middlesboro as a split. The courts refer to it as a split, and it was a split. Why? Because a part of the delegates went to London and a part of them remained at Middlesboro.

Our contention is this: You will see from an examination of the record that a part of them did go one way and a part stayed at Middlesboro. It seems to me that the only fair way that we can get at this thing, the only sound doctrine that we can adopt in determining this question, is this: In that convention at Middlesboro, and in the one that was held at London, how was the majority of the uncontested, undisputed votes? This is our view of the case. We claim that from the very moment the convention was called to order at Middlesboro, the majority of such votes was for Hunter, and that is shown clear through this record.

I call your attention now briefly to a decision that I have here. I have found only one case that seems to be on all-fours with this—just like this. That is a case from Colorado, the case of *Liggett v. Bates*

(50 Pacific Reporter, p. 860). It seems to me that it sets out this matter very clearly. I read from the syllabus:

A political party convention met in the place provided by the call, and the chairman of the county central committee called it to order, and before the election of a temporary chairman he entertained a motion to adjourn to another place, and declared it carried by a viva voce vote and refused to allow a division. *Held*, a majority of the convention thereafter remaining and nominating officers constituted the legal convention, as said adjournment was unauthorized.

Mr. CURRIER. That is where not even a temporary chairman had been selected?

Mr. RAMSEY. Certainly. Why would it not apply where there had been no permanent organization?

Mr. CURRIER. I am not so sure.

Mr. RAMSEY. That is the syllabus from which I read. The opinion said that the majority of legally constituted delegates at the place fixed by the party call is the legal convention. That is exactly what they decided in that opinion.

Mr. CURRIER. But they do not decide the exact question; that is, in this case, whether a temporary organization can adjourn from that place.

Mr. RAMSEY. That is the case of Liggett against Bates. Another question I desire to call your attention to is this: After the convention at Middlesboro, Doctor Hunter had a certificate in proper form. It was signed and acknowledged by the chairman and secretary, as required by the Kentucky statutes, and filed with the secretary of state, as required by the election law of Kentucky.

Then, on Monday morning the Edwards people met in London, and they say that they nominated Edwards, and they have a certificate made out in the form required by the statute, signed by the chairman and secretary and acknowledged, and also filed the same; so that the secretary of state had before him two certificates of nomination—one filed on Monday morning, somewhere between 8 and 9 o'clock, and the other filed late Monday evening, perhaps 6 or 7 o'clock. The last filed was the Edwards certificate. The secretary of state had these two certificates before him. Both of them were in proper form. Both of them were signed and acknowledged as required by the law. He must determine which of these candidates must go on the ballot. Now, we have some law on that subject. The election law provides that he must do this not less than twenty days before the election; that he must certify to the different county clerks the name entitled to go on the official ballot under the party emblem. That was the last day, I believe, or perhaps the next day was the last, that he had to do that. He had nothing before him to determine which certificate he should recognize. Mr. J. Sherman Cooper, who acted as county chairman and passed on his own case, and called the Middlesboro convention to order as district chairman, claiming to be the whole thing himself, made an affidavit and sent it to the secretary of state and said that Edwards was the man that ought to go on the ballot.

Doctor Hunter's friends questioned that, and said "Here, Mr. Cooper, you have no such authority as that. One man can not decide who is the nominee of the convention. We deny your authority." The secretary of state took those two certificates and looked at them, and he explains why it was that he certified Doctor Hunter as entitled to go on the ballot. He certified the name of Doctor Hunter October

20, and he says the reason he did it was this, because he saw that Doctor Hunter was nominated by a convention at Middlesboro, the place designated by the party call. He says that Doctor Hunter's certificate showed that he had been nominated by the convention held at Middlesboro, while Mr. Edwards's certificate showed that he had been nominated by a convention held at Middlesboro and London. And inasmuch as he noticed a defect in the certificate of Edwards, and also because Doctor Hunter's certificate was the first filed, he recognized Doctor Hunter's certificate and certified to the different county clerks that his name should go on the ballot.

Then, immediately after that was done, Mr. Edwards filed a suit before the circuit judge of his district, in which he claimed that he was entitled to the nomination. And Judge Faulkner granted an injunction against all the clerks in that Eleventh Congressional district restraining each and every one of them from placing the name of Doctor Hunter under the log cabin on the ballot, and requiring them by a mandatory restraining order to place the name of Mr. Edwards under the log cabin. Said order was obtained on the 22d day of October, and it was sent out to all the clerks of the district, and was done altogether without notice to Doctor Hunter.

Mr. SULLIVAN. That was *ex parte*?

Mr. RAMSEY. Yes, sir.

Mr. EDWARDS. That was done under the law.

Mr. RAMSEY. That was the action. Doctor Hunter, when he found out what was done, went to Judge Faulkner and moved to dissolve the injunction upon the ground that it was contrary to the law and he had no right to issue that order under the circumstances, and had no jurisdiction—

Mr. ALCORN. Do you not know that that was only a mandatory restraining order and not an injunction?

Mr. RAMSEY. The effect is the same. It forbid the county clerk from putting the name of Doctor Hunter anywhere on the official ballot, but directed that the name of D. C. Edwards be placed under the log cabin on the ballot. When he granted that order on the 22d of October he fixed a date for hearing; and when? He fixed it for the 29th of October. Doctor Hunter could not be heard in court until the 29th day of October, and then it was that Judge Faulkner did grant the mandatory injunction at Manchester.

Mr. ALCORN. After the hearing?

Mr. RAMSEY. Yes, sir; after the hearing. And he said that Doctor Hunter should not go on the ballot anywhere, and that Mr. Edwards's name should go under the log cabin in all these counties.

What did we do then? Doctor Hunter gave notice that he would go before one of the judges of the court of appeals and move on November 2 to dissolve that injunction. He went before Judge Settle; and it was no fault of ours that we could not get before him any sooner. Notice was given that said motion would be made on the morning of November 2 at Bowling Green, Ky., but we could not get the record in time. Mr. Edwards was the circuit clerk; he had the record in his possession. We could not get the record by Monday morning at 10 o'clock; and then by agreement it was determined that this matter should not be heard until Monday night before Judge Settle in Louisville, Ky. Although Mr. Edwards had resorted to the courts while

Doctor Hunter was in Louisville attending to his case before Judge Settle, Mr. Edwards and J. Sherman Cooper were fixing up for a little meeting in the town of London and arranging to have Mr. Edwards declared the nominee in that district. The record shows that.

What happened then? Judge Settle held that Judge Faulkner had no right to take jurisdiction in said suit. The injunction was dissolved. That was after a full hearing by all the parties. He said this question must be settled, not by the courts to which Mr. Edwards had appealed, but it must be settled by the governing authority of the party. He held that it is a political question that must be determined by party authority. No circuit judge, Democratic or Republican, has a right to say who the nominee shall be, but the party authorities must speak on the question. That is what Judge Settle decided. Judge Settle held, it is true, that the district committee should pass upon the question. The district committee did meet and, according to their contention, declared that Mr. Edwards was the nominee, before Judge Settle's opinion came out. That is what happened.

Then Mr. Cooper seemed to be a little doubtful about his authority. It seemed that he had not been very successful; the secretary of state had not recognized the one-man power. The court had not recognized the one-man power. And so Mr. Cooper concluded to call on Mr. Barnett, the chairman of the Republican State central committee, to have a meeting of the State central committee to determine whether he was the governing authority in the Eleventh Congressional district. And that meeting was called at Mr. Cooper's suggestion for the 28th day of October, and when the committee met all the members were present, either in person or by proxy, to the number of 13.

Mr. SULLIVAN. That was called in Mr. Cooper's district?

Mr. RAMSEY. Yes, sir; and I would refer you to the evidence of Mr. Barnett, who says that it was called at Mr. Cooper's instance, in order to determine his authority.

Mr. SULLIVAN. When that committee meeting was held Mr. Cooper was there?

Mr. DUDLEY. He was a member of the committee.

Mr. RAMSEY. From the Eleventh district.

Mr. DUDLEY. That is it.

Mr. RAMSEY. He was there, and Mr. Edwards was there. He was represented by counsel, and both sides of this question were heard, and after a full hearing, and every member of that committee being present, a decision was rendered. They have 2 members from the State at large and 1 member from each Congressional district. There are 11 districts, and a member from each of those districts and two at large made 13 members; so that there were 13 members present in person and by proxy.

That committee said, on the question of what constituted the governing authority of a party in a Congressional district in the State of Kentucky:

The State central committee is of the opinion, and decides, that the various county chairmen, together with the district chairman in each Congressional district, constitute the governing political authority of the party in the district.

In other words, they said: "Mr. Cooper, you are but one out of the eleven men who constitute the governing authority in the Eleventh Congressional district."

Mr. CURRIER. Now, let me ask you this: Up to that stage of the proceedings you all agreed that the governing authority was this committee in the Congressional district?

Mr. RAMSEY. Yes, sir.

Mr. CURRIER. With one member from each county?

Mr. RAMSEY. That is the governing authority.

Mr. CURRIER. And do you still maintain that?

Mr. RAMSEY. We still maintain—do not misunderstand me, now—that the chairmen of the different counties and the chairman of the district constitute the governing authority of the district for the party.

Mr. CURRIER. Yes.

Mr. RAMSEY. But the State central committee also decided that in case two or more candidates claim to be the nominees of the Republican party in the Congressional district, it is the duty of the district chairman to call a meeting of the committee and to notify the contending candidates of the day and place at which their respective claims will be heard; and upon final hearing it is the duty of the district committee, as the governing authority of the said district, to decide which of the said candidates is entitled to the nomination as the nominee of the Republican party, and it is the duty of the committee then to order the chairman of the committee to certify the decision to the secretary of state. And any party desiring to take an appeal from the executive committee to the State central committee may do so, and the decision of the State central committee is final and binding on all contending candidates.

Mr. CURRIER. Then the governing authority is in the State central committee?

Mr. WEEMS. How did the vote stand on that?

Mr. RAMSEY. The vote stood 8 in favor of that resolution and 5 against it. That is exactly how it stood—8 to 5.

It is contended by the other side that this is a change of the rules; that under the rules there was no right of appeal from the district committee to the State central committee. It shows on its face that it was not a change of the rules. They were simply construing the rules as they then stood—not making a new law, not making a new rule.

Mr. CURRIER. Where are the rules? Have you got them here?

Mr. RAMSEY. Here they are, right here [indicating rules].

Mr. MILLER. Refer us to the rule which by any stretch of imagination can be construed as saying that the State central committee has any right to decide that an appeal will lie from the Congressional committee to the State central committee.

Mr. RAMSEY. I refer to page 15 of the rules.

Mr. MILLER. Read the rule.

Mr. RAMSEY. Yes, I will read it. It is conceded that in a matter of minor importance, such as the election of a precinct chairman—

Mr. MILLER. That is a different thing.

Mr. RAMSEY (continuing). Or such as the election of a district chairman—

Mr. MILLER. And that is a different thing, too.

Mr. RAMSEY (continuing). There is a right of appeal to the district committee, and from the district committee to the State central committee. It is admitted that in such minor matters there is the right of appeal. But if it be true that in matters of such minor importance

there is the right of appeal, is it not absurd to say that when it comes to a question involving a man's right to a position as the nominee of his party there is no appeal?

Mr. CURRIER. The rule will decide that question.

Mr. RAMSEY (reading):

All contests and controversies shall be tried alone upon affidavits, and when appealed the affidavits shall be forwarded to the proper authority.

Any ruling that affects the party's interest of either precinct or county chairman shall be subject to appeal and revision as herein provided. The decision of the State central committee shall be final and binding on all questions.

Mr. CURRIER. Read again what they give an appeal on.

Mr. ALCORN. Ask him of what subject does rule 17 treat?

Mr. SULLIVAN. That does not include, apparently, any Congressional contests.

Mr. MILLER. I do not want to annoy you by questions, but let me ask you if ever, in the political history of the parties in this country, there has been an appeal, so far as you know, from a Congressional committee, on the subject of a Congressional candidate, to the State central committee?

Mr. RAMSEY. Yes, sir; there has been. That rule has been recognized, and the fact that J. Sherman Cooper himself appealed to the State central committee is authority to show what view he took of it.

Mr. CURRIER. What have you to say as to where the governing authority was, under the rules, as to whether it was with the county chairman and himself or whether he alone was the authority?

Mr. RAMSEY. Yes, sir; he claimed that he had the authority.

Mr. CURRIER. The simple question that he desired the State central committee to pass upon was whether he alone was the authority, or whether he, with the county chairman, possessed the authority.

Mr. MILLER. The proposition you put is a dangerous one and would permit a State central committee to name the candidate in a Congressional district every time.

Mr. CURRIER. This is a matter that has struck me as being of considerable importance, and I am glad to hear you discuss it.

Mr. BYRD. Would it not be the same proposition; if a State committee had a right to determine a district controversy, by the same logic has not a district committee the same right to determine a county controversy in a district?

Mr. RAMSEY. It provides here expressly that the losing party can appeal. It does provide that. That is why I say, if you can do that in matters of minor importance, why can you not do it where such serious matters as we have before us are involved? Now, Judge Field decided that question. He passed upon this question later on.

Mr. LANDIS. Judge Field or Judge Settle?

Mr. RAMSEY. Judge Field, later on. He says, "I think that the right of appeal from the district committee to the State central committee exists."

Mr. ALCORN. Does he not expressly say that that was obiter dictum? He declined jurisdiction of the case?

Mr. RAMSEY. I will tell you why he declined jurisdiction. We were put in this position: Mr. Hill, the secretary of state, after he had once sent out his certificate to the different county clerks that Doctor Hunter was entitled to go on the log cabin, on the official ballot, on the 4th day of November revoked his former action and certified Mr. Edwards.

How did he do that? He did not do it in the city of Frankfort, the seat of the government, but we find him in the county of Jefferson, city of Louisville, away from his office and at the Democratic headquarters at Seelbach's Hotel issuing a certificate in favor of Mr. Edwards on the 4th day of November, four or five days before the election.

Mr. CURRIER. Do you claim that he had no right to do it there?

Mr. RAMSEY. I do. I claim that he had no right to do it there. Judge Field said the reason that he did not take jurisdiction was because we had to sue the secretary of state in the county of his official residence, and that was in the county of Franklin, the seat of government. How could we wait until he got back to Frankfort when the time was so short, and how could we prevent him from sending telegrams from Democratic headquarters that Edwards was the nominee? How could we wait until he got back to get process upon him in the county of Franklin? We had to act at once.

Mr. ALCORN. Did not Mr. Hill swear that he was in Louisville when he telegraphed his clerk to file Doctor Hunter's certificate in the first place?

Mr. RAMSEY. Yes, sir; he was in Louisville when that certificate was filed, and the deputy telephoned to him, and he told him to file it, and then when it was filed in his office he went to Frankfort and the certificate was issued at the seat of government in favor of Hunter. That is how it occurred. Now, as I have said, the courts held that Edwards failed to sustain his contention. The State central committee decided that the action of J. Sherman Cooper, as district chairman, in saying that he was the governing authority and that Mr. Edwards was the nominee was null and void. So that he has failed in these two instances to sustain his contention that he was the nominee.

What does he do now? The next thing he does is to get the district committee to meet at London. I want to call your attention to that. We say that the committee meeting in London on the 2d of November, at which he claims to have been nominated or declared the nominee, was nothing more nor less than a farce, a travesty on justice. Why? Because out of 19 members in that Congressional district there were only three present in person, including J. Sherman Cooper. The chairman of Laurel County and the chairman of Jackson County were the only chairmen present besides Cooper.

Mr. WEEMS. Was Doctor Hunter notified?

Mr. RAMSEY. He was notified by wire at a time when it was impossible for him to be there. J. Sherman Cooper called that meeting on Sunday afternoon, November 1, about 1 o'clock, according to his own testimony. Before he called it he sent a telegram to Edwards, at London: "When and where can I see you?"

Then what is the next thing he does? Edwards sent a telegram to Cooper and said:

Proceed by wire; London, 7, Monday evening, Riley House, if you have Clinton.

Edwards sends that telegram to J. Sherman Cooper. J. Sherman Cooper on Sunday afternoon got in communication with the chairman of Clinton County and found out that his proxy was all right. Then he issues the call—begins to telephone around to such chairmen as he could reach that there will be a committee meeting on the night of November 2, the very night that Doctor Hunter was in Louisville attending to his case before Judge Settle.

Mr. CURRIER. How many members were at that time represented in person or by proxy?

Mr. RAMSEY. According to their own secretary, C. M. Province, there were thirteen persons present in person and by proxy. That is what he claims, that there were three present in person and ten by proxy.

Mr. CURRIER. How about that meeting of the State committee?

Mr. RAMSEY. I will get to that meeting directly.

Mr. CURRIER. Tell us about that, whether they were present in person or by proxy?

Mr. RAMSEY. I want to finish my answer to your question. As I said, it is claimed by them that thirteen members were present in person and by proxy, ten of whom were present by proxy. Now, it is shown by the records of that meeting that three men present by proxy, supposed to be favorable to Hunter, withdrew from the meeting, leaving ten there, which would be three members present in person and seven by proxy.

Now, gentleman, I wish you would notice these proxies; some of them were not dated; some of them were by telephone; some were by wire.

Mr. MILLER. Is there anything in the record to show that they were not authorized?

Mr. RAMSEY. They show for themselves, some of them do, that they were not authorized for that meeting.

Mr. DUDLEY. Some of these were absolutely void proxies.

Mr. CURRIER. How void?

Mr. DUDLEY. Because they are not in the name of the man holding the proxy, some of them.

Mr. RAMSEY. I hardly think they could be considered as legal proxies at all. Here is one from the chairman of Clinton County. I refer to page 183 of the record. This is a proxy that is not dated at all. There is no date to it except "Albany, Kentucky, — —, 1903." It authorized J. W. Catron to represent the undersigned in a meeting of the Eleventh Congressional district to be held at London, Ky., on the — day of November, 1903.

Then here is one that just says "Hazard, Ky., 31." That is on the same page—183 of the record. It reads:

TO GORDON EVERSOLE:

I hereby appoint you to represent me and cast my vote on all questions arising at meeting of the Republican committee of the Eleventh Congressional district of Kentucky, to be held at — date of — place.

The CHAIRMAN. I suppose that as to giving the proxy before the date fixed it was pretty short notice, shortly before the election, and that accounts for its being made in that way?

Mr. RAMSEY. It was the night before the regular election; yes, sir.

Mr. DUDLEY. The State election?

Mr. RAMSEY. Yes, sir. The chairman of the district pretended to call a meeting of the district committee for the night before the election, to be held in London.

The CHAIRMAN. Were those proxies challenged at that meeting?

Mr. RAMSEY. There was nobody there to challenge them when the meeting was held.

Mr. ALCORN. Where was Mr. Parker?

Mr. RAMSEY. He withdrew the proxy that he had; and not only that, but Mr. Parker did this: Mr. Parker then and there protested against any action on the part of that committee, upon the ground that sufficient notice had not been given, and on the ground that Doctor Hunter could not be present at that time, and upon other grounds that are set out in a protest which he filed there before the committee at that time.

Mr. CURRIER. Was it impossible for Doctor Hunter to have gotten to London to attend this meeting after he received his notice?

Mr. RAMSEY. He was not there——

Mr. CURRIER. I do not remember. I am asking for information about that.

Mr. RAMSEY. I think that he got that message either sometime late Sunday evening or early Monday morning. The testimony does not show exactly when it was.

Mr. ALCORN. That dispatch to Mr. Parker shows that it was sent on Sunday night. He could have gotten there on either one of two trains.

Mr. RAMSEY. At that time he had a hearing before Judge Settle, at that very same hour, at Louisville. He could not be in both places at once.

Mr. CURRIER. On Monday afternoon he had that hearing before Judge Settle?

Mr. RAMSEY. Monday evening; Monday night. It was 157 miles from Louisville to London. It takes all day to make the trip, or all night. I mean that it takes the night when you make the night trip, and it takes a day where you go in the daytime.

What we contend, then, is that the district committee meeting in London was nothing more or less than a farce. It was not a representative district committee meeting at all. We contend that it was gotten up for the very purpose of declaring Edwards the nominee.

Another strange thing about it is this: The chairman says the reason that he called the committee meeting at Junction City on the 22d of September and the 5th of October was on account of the convenience of the members, because they could all get there so easily. But, strange to say, on such a short notice as this was, he saw fit to call this committee meeting at London instead of at Junction City.

Mr. ALCORN. Because you had objected to having it at Junction City again.

Mr. RAMSEY. The record does not show that.

Mr. BYRD. This call for a meeting of the district committee was after a meeting of the State central committee which gave the district committee jurisdiction of it, was it?

Mr. RAMSEY. Yes, sir; exactly. Mind you, the State central committee had made this ruling on the 28th day of October, and on the night of the 2d of November was when the committee met at London and pretended to declare Edwards the nominee.

Mr. Parker, as the attorney of Doctor Hunter, protested against the action of the committee at that time, and claimed that the notice was not sufficient, and that the meeting was null and void for other reasons, which are set out and shown in the record, and I will not take the time to read it now. But an appeal was taken to the State central committee.

The chairman of the district, Mr. Barnett, called a meeting of the state central committee for the 5th of November to hear this appeal.

There were 11 members of the committee present in person and by proxy; 11 altogether. They took up this matter. Doctor Hunter was there with his attorneys. Mr. Edwards was there in person and by attorney. After a hearing of this matter the State central committee decided by a vote of 7 to 4—

Mr. ALCORN. What did they hear that on?

Mr. RAMSEY. I will come to that. By a vote of 7 to 4 that committee decided that W. Godfrey Hunter was the legal nominee of the party in that district, and as such was entitled to go on the ballot under the log cabin, and the secretary was directed to so certify to the secretary of state; and he did so, and not only sent to the secretary of state, but sent certificates to the various clerks of the different counties of the Eleventh district. Not only did he send out the certificate, but he sent telegrams to the same effect, to all these different counties, that the highest authority in the party, the State central committee, had, after a hearing of the matter, decided that W. Godfrey Hunter was the nominee of the party.

Mr. BYRD. That was after this district committee had met, and on an appeal?

Mr. RAMSEY. That was on an appeal from the district committee; yes, sir.

Mr. SULLIVAN. I can not find any authority for those appeals.

Mr. MILLER. I can not either, and there is none there. Suppose that the State central committee did take that position, what right had they to take it. There is nothing in the rules that justifies that action of the State central committee, from the beginning to the end, and they were assuming an authority that they did not possess.

Mr. CURRIER. Who took this last appeal?

Mr. MILLER. Mr. Parker, on behalf of Hunter. That is why I asked Mr. Ramsey a while ago, if, under the practice in that State, it had been the practice of the party to recognize an appeal to the State central committee.

Mr. RAMSEY. If you ask me whether or not there has been a case in the Republican party that is exactly on all fours with this and where two Republicans claimed to be the nominee of the district and there was an appeal taken from the district committee to the State central committee, I have no case in mind that I can cite you to. I know that it has been the practice though under the rules of the Democratic party.

Mr. MILLER. That is a different proposition. Their rules may provide for it.

Mr. ALCORN. They do, expressly.

Mr. RAMSEY. It seems to me that the same logic would apply to controversies of this kind in the Republican party.

Mr. CURRIER. Have you a copy of the rules of the Democratic organization?

Mr. ALCORN. No, sir; I have not.

Mr. RAMSEY. I am not contending that they are authority in this case. It seems to me that the logic of the question would be the same in determining controversies of this kind.

Here is what the State central committee decided. It says:

Whereas W. Godfrey Hunter and D. C. Edwards are both candidates for Congress in the Eleventh Congressional district of Kentucky, and each claims to be the nominee of the Republican party and entitled to be placed on the official election

ballots under the log-cabin device for the special election to be held in said district November 10, 1903; and

Whereas each of said candidates claims to hold certificates of nomination, and each of them claims to have been certified by the secretary of state of Kentucky to the various county clerks in said district to be entitled to the party emblem; and whereas on Monday, in London, Ky., November 2, 1903, what purported to be a meeting of the district committee in the Eleventh Congressional district, of which J. Sherman Cooper is acting as chairman, declared or attempted to declare that D. C. Edwards was and is the legal nominee of said party in said district for said position, and thereafter certified to the secretary of state of Kentucky that said Edwards is entitled to the Republican party emblem, "the log cabin;" and

Whereas the said W. G. Hunter protested against the action of said pretended committee and appealed to this committee to take up this controversy and settle it:

First. Now, be it resolved that the Republican State central committee, the highest governing authority in said party in the State of Kentucky, is of the opinion and it is so declared by this committee that the action of said pretended committee meeting held in London, Ky., November 2, 1903, was illegal, null, and void.

Second. We hold that an appeal lies from the action of the district committee to the State central committee in contests and disputes of this character according to the rules and regulations of the Republican party organization in Kentucky.

Third. We are of the opinion and so decide and hold from the facts and evidence before us that W. Godfrey Hunter is the legal nominee of the Republican party in said district for Congress, and is therefore entitled to the Republican party emblem, the "log cabin," and we direct that the chairman and secretary of this committee, or either of them, notify in writing the secretary of state of Kentucky, and the various county clerks in said district forthwith the action of this committee, and designate to each of them the name of said Hunter as the said Republican nominee entitled to the party emblem as aforesaid for said special election November 10, 1903.

I certify that this is a true copy of the resolution adopted by the Republican State central committee at its meeting held November 5, 1903.

R. L. GWATHMEY,

Secretary Republican State Central Committee.

That was on the 5th of November, 1903.

Now, since you asked me a question a while ago in reference to the custom in Kentucky, I remember now that but a short time ago, under these very same rules, the chairman—the present chairman—of the Republican party in the State of Kentucky, claiming that it had general control and supervision of the interests of the party all over the State, took up the question as to who was the nominee in the Eleventh Congressional district of Kentucky, and passed on matters affecting D. C. Edwards and W. Godfrey Hunter in this last race.

Mr. ALCORN. Did it not expressly say that its action was merely advisory; that its conduct was advisory?

Mr. RAMSEY. When there was absolutely no contest before the committee and no appeal by anybody to the committee, the committee, claiming that it had the right of general supervision over the interests of the party everywhere in the State, took jurisdiction of the case, and ordered the candidates and the members of the district committee to appear, that a full investigation might be had.

Mr. HUNTER. They issued a call for the committee to meet at a certain time?

Mr. RAMSEY. Yes, sir; and not only that, but they notified the candidates and told them to bring all their papers and everything connected with that race, and they had the whole thing before them.

Mr. BYRD. Let me ask you one question. You have a law in Kentucky which requires, as I understand, the secretary of state, upon the certificate of the proper party authorities, to place the name of a nominee upon the ticket under the party emblem. Does that law say the candidate for Congress shall be placed upon it under the

authority of the chairman of the district committee, or of the State committee, or does it say anything about that?

Mr. RAMSEY. The law says that where there are two contending candidates, then that one shall be recognized who has back of him the regular constituted authorities of the party.

Mr. LANDIS. In the absence of a contest, who certifies to the secretary of state, your convention chairman and secretary?

Mr. RAMSEY. The convention chairman and secretary; yes, sir. The chairman of the nominating convention certifies.

Mr. WEEMS. Is your secretary of state given any judicial powers by the statute?

Mr. RAMSEY. I am glad that you mentioned that. We take the position that the secretary of state, having once acted in the matter, having performed the duty that was required of him by law, namely, to decide who was entitled to go under the log cabin—the emblem of the party—had no right, in that arbitrary way, in the city of Louisville, without notice to Doctor Hunter, without a hearing on the part of Doctor Hunter, without giving him an opportunity to present his case to him, to revoke his action and give another certificate. In other words, he had no right to decide it again. Once decided, the question is always decided, so far as he is concerned.

Mr. WEEMS. Does the statute require this act of certifying to be done in any certain time before the election?

Mr. RAMSEY. I have just read to you, a short while ago, that the law says that he shall do it not less than twenty days before the election.

Mr. WEEMS. The first certificate in this case was twenty days before the election?

Mr. RAMSEY. Yes, sir; within the time.

Mr. SULLIVAN. Were the others?

Mr. RAMSEY. No, but just five days before the election.

Mr. SULLIVAN. You claim that he has no power of revocation?

Mr. DUDLEY. Time runs against him.

Mr. RAMSEY. I claim that if he has once acted, and within the time provided by law, he has no right under the law within five days before the election, being away from the seat of government, and without notice to Doctor Hunter or his attorney, and without giving him an opportunity to be heard, by certificate from Louisville and by telegraph, to revoke his former action. Judge Settle undertook to pass upon that question. He said that he had to act upon what he had before him. The party had given him nothing upon which he could decide the question. There were two certificates, and he had to act within the time fixed by law. Judge Settle said that he never did hold and never intended to hold that there was not a right of appeal or that the State central committee did not have a right to decide. Judge Settle says:

The opinion itself indicates very clearly my decision. The opinion does not hold that the right of appeal did or did not exist in behalf of either party to the State central committee from the action of the district committee. In other words, that question was not before me.

Mr. MILLER. Judge Settle simply testified that it was not a question for the secretary of state to settle as to who was to go upon the ballot, but that it was a question for the governing authority of the party to determine, and that the secretary of state must certify the names to

the county chairmen, but that the governing power of the party must decide?

Mr. RAMSEY. Yes; and it not having done that, he had to go upon what he had before him.

Mr. MILLER. But the secretary of state testifies in this case, and explains why he revoked the former certificate and issued this second one?

Mr. RAMSEY. Yes, sir.

Mr. MILLER. He did it upon the ground that the governing authority of the party had acted, and he did it in accordance with the authority of the party?

Mr. RAMSEY. But Judge Settle says expressly in that opinion that he rendered there that he saw no reason why, provided it was done within the time for it to be done, he could not act. That was simply obiter dictum. The secretary made the second certificate just five days before the election.

Mr. WEEMS. He did act, and acted within the time, and he could not revoke it?

Mr. RAMSEY. Yes; he could not revoke it in that way.

Mr. SULLIVAN. But he made the first certificate without waiting for the action of the governing authority of the party.

Mr. RAMSEY. Yes, sir.

Mr. SULLIVAN. I want to know whether that is a fact.

Mr. RAMSEY. Yes, sir; it is a fact, because the time fixed by law for him to act expired the next day.

The CHAIRMAN. Let me ask you a question right there, independent of this question of the time of certification, but merely on the question of nomination. If I understand the position, boiled down, it is this: If, as Mr. Edwards claims, the district committee was the governing authority, and they decided in his favor, then his name was entitled to go on the ballot. But if, as you contend, there was an appeal to the State central committee, then that committee having decided in favor of Doctor Hunter his name was the one properly entitled to be on the ballot. Is that the position as to the nomination?

Mr. RAMSEY. The secretary of state first decided in favor of Hunter?

The CHAIRMAN. I understand the facts, but—

Mr. RAMSEY. And also the State central committee decided in favor of Hunter, but the district committee decided in favor of Edwards. Now, if you say that the district committee decides the whole thing and that the action of the district committee was legal and could not be appealed from, and that it was a legal meeting of the committee, then of course Edwards was the nominee.

The CHAIRMAN. But otherwise, if there was an appeal to the State central committee, and that committee decided in favor of Hunter, and if they had the right to pass upon the question on appeal, then Hunter's, you say, was the proper name to go on the ballot?

Mr. RAMSEY. Exactly.

Mr. SULLIVAN. But you say that even if there was not a right of appeal, the meeting held by the district committee was invalid?

Mr. RAMSEY. I do; that it was null and void. Even if there was no right of appeal that meeting was null and void.

Mr. CURRIER. For want of notice to Hunter?

Mr. RAMSEY. Yes, sir; and on other grounds.

Mr. CURRIER. What other grounds? That is a matter of importance.

Mr. RAMSEY. They are set out in the record.

Mr. BYRD. Have you any authority to cite as to where this committee has any power to inquire into how party nominations were made?

The CHAIRMAN. At the beginning of Mr. Ramsey's remarks I tried to divert him away from this part of the case.

Mr. BYRD. Has this committee the right to take anything else than what has been done by the duly constituted legal authorities of the party in Kentucky?

Mr. RAMSEY. I think that is the real thing.

Mr. BYRD. Then why discuss all these other matters?

Mr. RAMSEY. I do it simply in answer to what has been discussed on the other side.

Mr. BYRD. Do you not think that the question involved in this case is whether this committee has the power—

Mr. RAMSEY. General Dudley will answer that, if you will allow him.

Mr. BYRD. Very well.

Mr. RAMSEY. It is conceded here that Doctor Hunter had his name on the ballots in 5 of the counties and Mr. Edwards had his name on the ballot in 14 of the counties. So the question is asked, is there anything showing any fraud on the part of Doctor Hunter in getting his name on the ballot in those 5 counties? I invite you to search this record from beginning to end and you will see that in these 5 counties—Clinton, Cumberland, Pulaski, Harlan, and Russell—there is no evidence whatever to show that there was any fraud on the part of Doctor Hunter, but these clerks were doing what they believed to be their duty under the law; that after the State central committee had declared Doctor Hunter was the nominee they believed that he was really the legal nominee and acted in accordance with that belief and placed his name on the ballot.

Mr. WEEMS. Is there any evidence showing that he tried to get them to do that in any of these instances?

Mr. RAMSEY. There is evidence, not that Doctor Hunter tried to prevail upon any of these five county clerks to so place his name upon the ballot under the party emblem, but evidence to show that the county clerk of Pulaski County was arrested on a telephone message from Judge Faulkner and that an attempt was made to intimidate him by threats in order to induce him to place the name of Edwards on the ballot. He was threatened with arrest if he sent out any ballots with the name of Doctor Hunter on them, and he did send them out and they actually did arrest John May, a poor old cripple, for putting Doctor Hunter's name on the ballot under the party emblem when the State central committee said that he was the legal nominee.

Mr. BYRD. If a man gets a majority of the votes, whether he is nominated by anybody or not, is he entitled to a seat?

Mr. RAMSEY. Yes, sir; he is entitled to his seat. By unanimous action of the board of election commissioners in Kentucky Doctor Hunter was awarded the certificate of election, and he had his name on the ballots in only 5 counties, and Mr. Edwards had his name under the log cabin on the ballots in 14 counties, and the only way, in these other counties, that Doctor Hunter could be voted for was by a man writing his name on the ballot.

Mr. MILLER. What does the law say about the votes being counted for a man who has no right on the ballot?

Mr. RAMSEY. You can vote for any man that you wish to by writing his name on the ballot.

Mr. MILLER. I am not speaking about writing a man's name in. But take the case of a man whose name is put upon any ballot without authority of law, under the party emblem, and who has no right to have his name there; what does your law say about that kind of a candidate?

Mr. RAMSEY. We have no precedents except such as have been given here by Congress. They say, in the case of Fairchild v. Ward, if a man is not properly on the ballot, yet if he receives the highest number of votes he is entitled to his seat.

Mr. SULLIVAN. Following up Mr. Miller's line of inquiry you concede that either Edwards's name or Hunter's name was unlawfully on the ballot?

Mr. RAMSEY. Yes, sir; they were not both entitled to the party emblem.

Mr. SULLIVAN. One of them only was entitled to go upon the ballot at all, except by having a voter write his name in?

Mr. RAMSEY. Yes, sir.

Mr. SULLIVAN. In other words, they chose one of the three ways in Kentucky to get upon a ballot. Both of them are nominees of the convention; only one can be the nominee of that convention, and therefore only one can be lawfully upon the ballot. Do you agree with me?

Mr. RAMSEY. I agree that only one could go on the ballot under the log cabin.

Mr. SULLIVAN. You agree with me that one of these two men is unlawfully on the ballot?

Mr. RAMSEY. Under the log cabin?

Mr. SULLIVAN. Yes.

Mr. RAMSEY. Undoubtedly.

Mr. SULLIVAN. And that as to that one whose name is there unlawfully, no ballot should be counted except those upon which the name was written by the voter?

Mr. RAMSEY. No, sir; I do not agree to that.

Mr. SULLIVAN. Will you tell me why you do not?

Mr. RAMSEY. Because his name is on the ballot and the voter voted for him.

Mr. SULLIVAN. His name is upon that ballot only as the candidate of his party, nominated at a convention. That is one of the three ways, in your State, to get upon a ballot. Those two men chose that method of getting upon a ballot as the party candidate.

Mr. RAMSEY. Yes, sir.

Mr. SULLIVAN. Therefore as the convention could nominate only one, one of them must be unlawfully upon the ballot, because he has no standing upon the ballot except as the nominee of his party in a convention.

Mr. RAMSEY. Yes, sir.

Mr. SULLIVAN. Now, as to that one of these two who is unlawfully upon the ballot, all ballots counted for him are counted wrongfully except those where the voter wrote his name in?

Mr. WEEMS. No ballot is counted wrongfully that expresses the will of the voter.

Mr. RAMSEY. That is it, exactly.

Mr. SULLIVAN. Then you do not agree with that?

Mr. RAMSEY. No, sir; I do not agree that the ballot should be rejected.

Mr. SULLIVAN. Tell me why not.

Mr. RAMSEY. Suppose that Doctor Hunter's friends in the district wanted to vote for him, and his name did not appear on the ballot, they could write his name and vote for him?

Mr. SULLIVAN. That is it.

Mr. RAMSEY. If it is already on there, they have a right to vote for him just the same, and they vote for him, and in either case the ballot expresses the will of the voter, and we do not think that it should be excluded.

The CHAIRMAN. Suppose the man's name is on the ballot, and still, in addition to that, you write it on the ballot, would that vitiate the ballot? It would in some States.

Mr. RAMSEY. No, sir; the written vote would prevail. It expresses the will of the voter. If the ballot has the name printed on there, and you write a name, the presumption is that the voter intended to vote for the man whose name he wrote.

The CHAIRMAN. If the name is printed on the ballot, and also somebody should write a name on, you could not count it twice?

Mr. RAMSEY. No, sir; only once.

Mr. MILLER. Under the law of some States you could not count it at all.

Mr. CURRIER. Should you concede that Mr. Edwards was the legal nominee and that his name should have been under the log cabin in every county, you would still contend that Doctor Hunter was elected and entitled to a seat here, would you?

Mr. RAMSEY. I would, because he got the highest number of votes.

Mr. CURRIER. I was asking for information.

Mr. RAMSEY. I would, because in this case he got the highest number of votes.

Mr. CURRIER. I understood that was the effect of your reply to Mr. Sullivan.

Mr. WEEMS. Let me ask you one more question. Just one more interruption. Suppose that Mr. Hunter was guilty of fraud, now, and that he was not nominated, and these five clerks acted wrong. After all that devilry is perpetrated, it comes to the election day, and we have the testimony of these fellows who were depended upon to keep out this majority, and they are a lot of full-blooded gentlemen, and after hearing their testimony and the cross-examination of such as were cross-examined, it strikes me this is the way they put it: "We went to the polls; we knew these two men; our eyes were open; we could read and write; there was Hunter's name printed under the log cabin. We had a fancy or notion of voting for the fellow under the log cabin; that is why we voted for him. We would have voted for the other fellow if his name had been under there; we voted for Hunter deliberately. We could have written that name in; our act was voluntary; our man was there; it was merely that we were influenced by the fact that the name was there." That election was not unfair. That was a perfectly free election. How is that? Does that present a case that authorizes the committee to interfere?

Mr. RAMSEY. I think not, if I understand you correctly.

Mr. WEEMS. I just suggested that for argument.

Mr. BYRD. It seems to me that it is a material point as to how many of these men there were. What is your proof as to how many votes were influenced by the log cabin?

Mr. WEEMS. There is no evidence in the record on that.

Mr. RAMSEY. I am glad that you asked me that question. Now, to show you that the voter was not controlled by the fact that the log cabin was on the ballot, to show you that he was not controlled by the log cabin, I will simply say that in the county of Harlan Doctor Hunter had his name printed under the log cabin on the ballot and Mr. Edwards's name was not on the ballot at all, but Edwards carried Harlan County, which shows that the voters there who wanted to vote for Edwards did it, although Hunter was under the log cabin.

Mr. CURRIER. It was just the other way in two counties.

Mr. RAMSEY. Let us go a little further. In the county of Monroe Mr. Edwards's name was under the log cabin, and Doctor Hunter carried the county of Monroe over Edwards, when his name was not on the ballot at all. In the county of Wayne Edwards's name was under the log cabin and Doctor Hunter's name was not on the ballot at all, but Doctor Hunter carried the county of Wayne by the voters writing his name on the ballot and voting for him, which shows that in two counties, although his name was not under the log cabin, Doctor Hunter carried the election where Edwards's name was under the log cabin. In the other case, in Harlan County, Doctor Hunter had his name printed on the ballot, and yet Mr. Edwards carried that county.

Now I must beg your pardon for taking up so much time, and I hope that you will hear General Dudley on our side, who will present such questions as I have not touched upon. There are a great many questions involved in this case that I would like to go over, but can not do so for lack of time.

ARGUMENT OF HON. WILLIAM W. DUDLEY, COUNSEL FOR THE CONTESTEE, HON. W. GODFREY HUNTER.

Mr. DUDLEY. Gentlemen, I have sat as you have and listened to the argument in this case, and I feel, as one of counsel for Mr. Hunter, that Judge Ramsey has covered the ground well, but one or two things I feel impelled to call the attention of the committee to. I will endeavor not to travel over any of the ground that has been gone over before. It occurs to me that, boiled down, there is but one main question now before this committee, and that is, Was the name of Doctor Hunter—W. G. Hunter—put upon the ballots in the five counties in which he received his vote—his larger vote—with any color of right? Was it put on there by fraud, or was it put on there with some color of right? If you shall hold from all that you have heard and from the testimony in this case that there was a color of right which governed the minds of the clerks of the five counties and impelled them to put the name of W. G. Hunter under the log cabin, and that they believed that they were doing right in doing so, you can not impeach the vote of Hunter, and he is elected. You would simply have to be guided by the action of Congress in previous cases of this character.

I am not going to take up time in reading these reports. They are familiar, I think, to all of you. But it has been the unbroken holding of Congress in cases of a similar character to this, that where

there has been no great wrong done, by fraud or wrongful means, and where a man comes here, with his name on the ballot under which he has received a majority, you will hesitate and Congress will hesitate before impeaching that vote, unless it shall be affirmatively shown that the placing of the name on the ballot was done by some fraud of his, or his friends with his knowledge.

Now, I undertake to say that there is not in this record, and the brief of counsel fails to point out, any evidence of fraud that is worthy to be called fraud or deserves to receive any recognition as such at your hands.

There is not one scintilla of proof in your hands that when Hunter's name was put on the ballot of these five counties it was put on there by any fraudulent action of his or of his agents; not a scintilla of evidence. Therefore, if you will be guided by the precedents of Congress—and I refer now particularly to the three cases in the Fifty-fourth, Fifty-fifth, and Fifty-sixth Congresses, respectively, the cases of *White v. Boreing*, *Hopkins v. Kendal*, and *Fairchild v. Ward*. All these cases presented some similar features. It is true that the statutes under which those elections have been held differed slightly; but the principles underlying them and this case are the same, and it has been held by Congress in all those cases, where a majority was apparent on the face of the returns and no fraud was shown in the procuring of the placing of the name on the ballot, that you should not disturb the sitting member. And that is this case exactly.

Mr. SULLIVAN. I do not like to interrupt, but do you make any distinction between the two cases, the one where a whole ballot is cast by the voter under an emblem without reference to the names on the ballot, and the other where a voter puts a cross against a particular name and votes in that way?

Mr. DUDLEY. That very question was discussed in the case of *Fairchild v. Ward*, and I think the chairman was present and heard that.

The CHAIRMAN. Yes; I did.

Mr. DUDLEY. And he, perhaps, will give you his recollection on that subject. And, of course, you have the report here. That fully answers your question.

It seems to me in the study of this record that there is one very important feature as explaining the partisan action of Chairman Cooper, which grows out of the manner of selection of the delegates from Pulaski County, and I want to call attention to that, and I want to read the testimony very briefly of one of the men who was in that convention and was a delegate. I want to read from the testimony of Edwin P. Morrow, beginning on page 297 of the record. The testimony of the witness, Edward P. Morrow, is here, by consent of the committee, inserted in the record, as follows:

Witness EDWIN P. MORROW, being of lawful age and by me first duly sworn, deposes as follows in answer to interrogatories by W. R. Ramsey, attorney for contestee, W. Godfrey Hunter:

1. Q. State your name, age, residence, and occupation.—A. Edwin P. Morrow; 27 years of age; reside in Somerset, Ky., and am an attorney at law.

2. Q. Of what political party are you a member?—A. Republican party.

3. Q. Were you present in the city of Somerset on October 15, 1903, at the Republican county convention which selected delegates to attend the district convention held at Middlesboro, October 17, 1903, to nominate a Republican candidate for Congress in the Eleventh Congressional district of Kentucky?—A. I was.

4. Q. Who was the chairman of said convention?—A. Henry H. Smith.

5. Q. Who was the secretary?—A. E. H. Hansford.

6. Q. State whether or not delegates were selected by said convention to attend the district convention at Middlesboro.—A. They were.

7. Q. For whom, if anybody, were said delegates instructed to vote at said district convention?—A. W. Godfrey Hunter.

8. Q. At what place in Somerset was said convention held?—A. In the court-house. That is, the organization was effected in the court-house and the delegates selected and instructed in the court-house.

9. Q. Please state what, if anything, occurred immediately preceding the organization of the convention in the court-house?—A. Immediately preceding the organization of the convention Mr. R. C. Tartar came to the court-house and made a speech. He was requested by myself and others to notify J. Sherman Cooper that we were waiting for him to make a report of his count, and urged him to induce Cooper and the other teller for Mr. Edwards to meet our tellers in the court-house and make a report. Tartar said he would see Mr. Cooper, and left the court-house and did not return. Some one or two speeches were made, and as Mr. Cooper, the county committee chairman, did not come to call the convention to order or to make his report in the capacity as teller, the convention was called to order by E. H. Hansford, secretary of the county committee, and Mr. E. H. Hansford was nominated chairman and elected, and the convention was organized.

10. Q. Do you know of any other convention of the Republicans of Pulaski County that was held in Somerset on that day for said purpose?—A. Yes, sir; there was a convention, or what purported to be a convention, assembled in front of the court-house about the same time as the convention met in the court room.

11. Q. Do you know what arrangements, if any, were made previous to the convention which was held in the court-house to ascertain the strength of the candidates for Congress on that day?—A. There was an agreement made between several gentlemen representing Dr. W. Godfrey Hunter and several representing Mr. D. C. Edwards to the effect that in order to organize the convention and ascertain the respective strength of the candidates named, that the friends and supporters of Dr. Hunter should be counted on Main street, north of the court-house, and those favoring D. C. Edwards should be counted south of the court-house, on Main street; that the one having the largest number of voters counted for him should be permitted to organize the convention in the court-house without any opposition from the other party. That is about the agreement, as I remember it.

12. Q. After said agreement was made, was or not there a division to determine which one of the two had the most votes?—A. There was such an agreement.

13. Q. Did you see the two lines or columns after they had formed to be counted?—A. Yes, sir; I did.

14. Q. Did you make any count of the lines or either one of them?—A. I saw the crowd at the time the division began in the public square, and the supporters of both candidates moved to their respective stations and formed into line. I then went the entire length of the Hunter column after it had been formed. Immediately afterwards I went to the Edwards line and noted the entire length of that line. From my knowledge and experience in counting large bodies of men that I counted while in the volunteer army of the United States, I made an estimate based on the distance as occupied by the two respective columns.

15. Q. What was the result of that estimate, or what was the number ascertained by you in each column?—A. I would make a conservative estimate that the Hunter column contained about 1,350 or 1,400 persons, and the Edwards column contained in the neighborhood of 950 or 1,000 persons.

16. Q. Describe, as near as you can, what space was occupied by the two columns, stating the beginning and the end of each column.—A. The Hunter column was formed from the crossing between what is now the People's Hotel and H. G. Litton's store on Main street, extending north on Main street to the intersection of Waddle avenue or Fifth street. The Edwards column had its headway at the alleyway between McBeath's store and Sallee Brothers' store on Main street, and extended south to Darie Young's photograph gallery. I think there was at least 75 or 100 yards more space occupied by the Hunter column than was occupied by the Edwards column.

17. Q. Do you know by whom or how the counters or tellers that were to make the count of the respective columns of the two candidates mentioned were selected or appointed?—A. I think now, as well as I remember, that Judge Denton and some other gentleman acted on behalf of Mr. Hunter and selected Hunter tellers, and that J. Sherman Cooper and Judge Catron selected the tellers for Mr. Edwards.

18. Q. Who were the tellers for Mr. Edwards?—A. Mr. J. Sherman Cooper and Napier Adams.

19. Q. Who were the tellers for Doctor Hunter?—A. Mr. Henry H. Smith and Mr. H. Bruce Newell. I think Mr. Mean Cooper acted and possibly some one else acted for Mr. Edwards whose name I do not now recall.

20. Q. Do you know what the vote was as shown by the count of the tellers?—A. I am not certain about that. I did know at the time, but it has escaped my memory.

21. Q. About how many men participated in the convention which was held in the court-house that instructed delegates to Middlesboro for Doctor Hunter for Congress?—A. The court room was crowded, but I do not think it would have accommodated more than one-third of the Hunter adherents.

22. Q. What was done by the convention after delegates were named or instructed to cast the vote for Pulaski County to the district convention for W. Godfrey Hunter for Congress?—A. The convention adjourned.

23. Q. State whether or not you were one of the delegates appointed by said convention to the district convention at Middlesboro.—A. I was.

24. Q. Did you attend the district convention at Middlesboro?—A. I did.

25. Q. When and by whom was the Middlesboro convention called to order?—A. The convention was called to order about 9 o'clock in the morning on the 17th of October by J. Sherman Cooper, chairman of the Eleventh Congressional district committee, also chairman of the Pulaski County committee.

26. Q. That was not the same J. Sherman Cooper who was a teller for the Edwards line in Somerset, Ky., October 15, 1903?—A. Yes, sir. He was the same self-appointed teller acting in that capacity in Somerset that day.

27. Q. State whether or not the said J. Sherman Cooper claimed to be a delegate from Pulaski County to said district convention.—A. He so claimed.

28. Q. Was he one of the delegates who was elected by the county convention held in the court-house of which Henry H. Smith was chairman?—A. He was not.

29. Q. State whether there was any other person besides J. Sherman Cooper at said district convention from the county of Pulaski who claimed to be delegates to that convention from said county who were not named or selected by the county convention held in the court-house on October 15.—A. There were several other persons claiming to be delegates from Pulaski County besides J. Sherman Cooper—Mr. J. Sherman Cooper's brother-in-law, R. C. Tartar; Mr. Grissom, from Burnside; George McGahan, Hardin Sweeney, J. R. Cook, United States commissioner of Pulaski County, and Mr. Frank Hines. That is all that I remember, though there might have been one or two others.

30. Q. Please state who was placed in nomination for temporary chairman for said convention at Middlesboro.—A. J. N. Sharp and Judge Denham, both of Williamsburg, Whitley County, Ky.

31. Q. L. D. Denham?—A. Yes, sir.

32. Q. Is that the same J. N. Sharp who is the law partner of J. Sherman Cooper at Somerset, Ky.?—A. Yes, sir; that is the same J. N. Sharp.

33. Q. Do you know by whom, if anybody, the credentials—if there were any credentials—which were held by J. Sherman Cooper and those associated with him, were signed?—A. Mr. Cooper alleged that they were signed by himself and the secretary selected by the alleged convention in the public square in the city of Somerset, Ky., on the 15th day of October, 1903.

34. Q. In taking the vote on the two names which were presented to the convention for temporary chairman, please state which of the two delegations from Pulaski County were recognized by the said J. Sherman Cooper and permitted by him to vote 41 votes in the temporary organization.—A. Mr. Cooper recognized the delegation bearing the certificate signed by himself from the convention at which he had been a teller, to which he had reported as teller and passed upon as county committeeman.

35. Q. Do you not know who, if anybody, presided over that meeting that was held outside of the court-house in the public square?—A. Do not know personally.

36. Q. Do you mean to say that the said J. Sherman Cooper, as district chairman at Middlesboro, passed upon his own right to a seat in the district convention at Middlesboro and the right of those delegates associated with him claiming to be delegates from Pulaski County?—A. Yes, sir.

37. Q. Do you remember how many delegations there were in said district convention from the county of Laurel?—A. There were two delegations.

38. Q. What vote was Laurel entitled to in said convention?—A. Twenty-one, I believe, though I have forgotten and will not say positively.

39. Q. Do you remember any other counties besides Laurel in which there were contesting delegations?—A. Contesting delegations from Jackson.

40. Q. Do you remember the vote Jackson County was entitled to in said convention?—A. Not exactly, but my impression is that it was 19.

41. Q. To refresh your recollection, was it not 18?—A. It might have been. I believe it is.

42. Q. State whether or not there was a contest also in the county of Letcher.—A. There was.

43. Q. Do you remember how many votes Letcher County was entitled to in said convention?—A. I do not.

44. Q. In the selection of a temporary chairman, is it or not true that the said J. Sherman Cooper recognized and permitted to vote in said temporary organization the delegation in Pulaski County—41 votes being those delegates who were favorable to Edwards; the Edwards men with 18 votes in the county of Jackson; the Edwards men with 22 votes in the county of Lural; the Edwards men in the county of Letcher with 11 votes, making in all 92 votes; which were contested in said convention and all of them in favor of D. C. Edwards, which the said J. Sherman Cooper permitted to vote in said temporary organization?—A. He did.

45. Q. State whether or not all of said votes, 92 in number, were permitted to be cast and were cast for J. N. Sharp as temporary chairman, the aforesaid law partner of J. Sherman Cooper.—A. They were.

46. Q. How many counties does the Eleventh Congressional district contain?—A. Nineteen counties.

47. Q. Will you please name them?—A. I will if I can do so. Monroe, Cumberland, Clinton, Adair, Russell, Wayne, Pulaski, Whitley, Laurel, Knox, Clay, Bell, Owsley, Letcher, Perry, Leslie, Jackson, Casey, and Harlan.

48. Q. How many counties in all?—A. Nineteen.

49. Q. Can you state how many of said 19 counties had delegations in said district convention that were instructed for D. C. Edwards in which there was no contest? If so, name them.—A. I do not know whether I can name all of them or not.

50. Q. Do you remember what counties had delegations instructed for W. Godfrey Hunter that were not contested or in dispute?—A. I think I remember most all of them—Adair, Russell, Monroe, Cumberland, Clinton, Letcher, I believe. Wayne, I believe, was instructed for Doctor Young.

51. Q. How was the county of Whitley instructed?—A. The county of Whitley instructed for E. L. Stephens.

52. Q. Was there any contest there?—A. No, sir.

53. Q. How was Leslie County instructed?—A. I believe for W. R. Ramsey.

54. Q. Was there any contest there?—A. No, sir.

55. Q. How was Perry County instructed?—A. I have forgotten.

56. Q. To refresh your recollection, did it not instruct for J. E. Johnston?—A. It did, since I recall the name.

57. Q. How was Knox County instructed?—A. For Mr. Coe.

58. Q. Is it not true that taking the counties whose delegates were actually instructed for D. C. Edwards and in which there was no contest, and taking the counties that were actually instructed for W. Godfrey Hunter in which there was no contest, that W. Godfrey Hunter had more instructed votes in said convention than D. C. Edwards?—A. He did, and such is the fact.

59. Q. Up to the time that a nomination was made at Middlesboro, was there any vote taken which indicated that D. C. Edwards was the choice and would be nominated by said convention as the Republican candidate for Congress?

(Question objected to by Contestant John D. White because it is leading and presumes the state of facts which the evidence taken in this case shows unwarranted, the convention having adjourned without making a nomination.)

(Question excepted to by Contestant Edwards on the same ground as excepted to by Contestant White.)

A. I am certain that none of the ballots taken were a direct indication of the strength of any one man before that body as a candidate for the nomination for Congress, more than the numerical strength of the counties that I named before, which were instructed for Hunter and instructed for Edwards and in which there was no contest.

60. Q. If the 41 votes of Pulaski County which was permitted by J. Sherman Cooper to be cast for J. N. Sharp as temporary chairman of said convention had not been permitted by him to vote, would or not said J. N. Sharp have been elected temporary chairman?—A. He would not have been elected temporary chairman.

(Objected to by Attorney J. W. Alcorn, for Contestant Edwards.)

61. Q. For whom was the delegates of the county of Adair instructed?—A. For W. Godfrey Hunter.

62. Q. How were the delegates from Bell County instructed?—A. My belief now is that the Bell delegation was uninstructed, but voting seven one way and eight the other, or about that ratio.

63. Q. Was it not about 14 to 7?—A. I believe the last roll call that was taken, my impression is, that the vote was given about that way; whether that is the exact figure, I can not say.

64. Q. As to what candidates do you mean that was the ratio?—A. Hunter and Edwards, Hunter having the largest number.

65. Q. How were the delegates instructed of the county of Casey?—A. I am not certain whether they were instructed or not, but it is my impression that they were instructed for Edwards.

66. Q. How were the delegates instructed of the county of Clay?—A. Instructed for Edwards.

66a. Q. How were the delegates instructed of the county of Clinton?—A. Hunter.

67. Q. How were the delegates from Cumberland County instructed?—A. Hunter.

68. Q. How were the delegates from Harlan County instructed?—A. Instructed for Hunter.

69. Q. To refresh your recollection, was not the vote of Harlan 8 for Hunter and 8 for Edwards?—A. That is correct.

70. Q. No contest or dispute in said county?—A. No, sir.

71. Q. How was the county of Monroe instructed?—A. Hunter.

72. Q. The county of Owsley?—A. I am not certain.

73. Q. Was not the county of Owsley instructed for Edwards?—A. I believe it was; that was my impression and I now think that was correct.

74. Q. How were the delegates from Russell County instructed?—A. For Hunter.

75. Q. Do you know what was the relative strength of the two candidates, Edwards and Hunter, in the county of Letcher in the delegation?—A. In the delegation representing Letcher County the strength was, I think, for Hunter.

76. Q. How many counties can you name that was instructed for Edwards and not in dispute?—A. Casey, Clay, Owsley, half of Harlan, and about half of Bell County; that is all I remember now, there may have been one other county.

77. Q. Who was appointed, if anybody, by J. N. Sharp as chairman of the committee on credentials?—A. Mr. F. C. Boyd, I believe.

78. Q. Was it not R. Boyd?—A. Yes, sir; Robert Boyd, of Laurel County.

79. Q. Was he or not the same R. Boyd, jr., who was a delegate from Laurel County, and whose seat in said convention was contested?—A. He was the same R. Boyd.

80. Q. State whether or not you heard the said R. Boyd, as chairman of the committee on credentials in said district convention, read a report to said convention in which he reported in favor of himself and those associated with him from the county of Laurel, and also in favor of all of those counties which were contested of the Edwards delegation.—A. I heard him read such a report before the convention.

81. Q. State whether or not it is true that the said J. N. Sharp, the law partner of the said J. Sherman Cooper, named as members of a committee on rules and order of business and committee on credentials and committee on permanent organization and committee on resolutions composed of a majority of Edwards men constituting each committee.—A. Yes, sir; he did.

82. Q. State whether or not it is true that the said J. N. Sharp appointed as members of those different committees delegates whose seats were in contest and undecided by the convention.—A. My recollection is that at one or two other instances besides the ones mentioned above that he appointed as members of the committees named persons whose seats were in contest before the convention.

83. Q. State whether or not the committee appointed by said J. N. Sharp on rules and order of business made any report or recommendation that the contest in said district convention should be taken up and passed upon in alphabetical order.—A. Yes, sir; that was one of the provisions reported and recommended by the committee on rules.

84. Q. When that report was read to the convention, state whether or not there was any amendment or substitute offered to the same.—A. There was a written amendment offered to it by Col. David G. Colson.

85. Q. To what effect?—A. As I remember it, there were two amendments offered to that. The one I speak of now was offered in the convention, and I believe that one was to the effect that the counties having the largest number of delegated votes should be taken up first and passed on first by the convention.

86. Q. State whether or not any motion was made with reference to said amendment.—A. There was a motion made by a delegate to table the amendment.

87. Q. Do you remember what delegate made that motion?—A. I did; but it has escaped my memory.

88. Q. To refresh your recollection, was it not Mr. Sam Cash, an Edwards delegate from the county of Clay?—A. Yes, sir; that is my recollection.

89. Q. State whether or not a vote was taken on the motion of Sam Cash to table Colson's amendment to the report of the committee on rules.—A. There was a vote taken on the motion to table the amendment and the vote was carried in favor of the motion so made to table the amendment.

(The contestant White excepts to the foregoing question and any answer thereto, and other questions and answers preceding it, in regard to who made certain motions and how certain votes were taken, because if there was a convention held at Middleboro at the time and place spoken of the best evidence of the fact would be the record kept by the secretary of said convention.)

90. Q. State whether or not the said chairman, J. N. Sharp, declared said motion to table carried.—A. He did.

91. Q. Do you remember what recommendation was made by the report of the committee on rules and order of business as to what parliamentary rules should govern the proceedings of that convention?

(Objected to by attorney for contestant Edwards, because the report is the best evidence.)

A. My memory now is that that committee recommended that Reed's parliamentary rules be adopted and used by the convention for its guidance.

92. Q. State whether or not when the said J. N. Sharp declared said motion, made by Sam Cash, carried any point of order was made as to the effect of tabling said amendment.—A. There was a point of order made by Col. David G. Colson and W. R. Ramsey that, as a motion had prevailed to table the amendment, that necessarily carried with it the report itself and everything connected therewith. Upon this question there was considerable discussion pro and con, the rule of order was read to the chairman in full, sustaining the position made in the point of order.

93. Q. What was the ruling of said J. N. Sharp on said point of order?

(Attorney for contestant Edwards objects because the record of the convention is best evidence.)

A. He ruled it out of order and refused to consider it.

94. Q. State whether or not he declared the report of said committee adopted.—A. He did.

92. Was or not there any appeal offered from the decision of said Sharp to the convention?—A. There was an appeal requested from his decision to the convention, but it was refused.

96. Q. By whom?—A. J. N. Sharp.

97. Q. Was or not the said J. N. Sharp called upon to produce or to refer to any parliamentary authority that would sustain his ruling on said point of order?—A. He was repeatedly requested and challenged to produce any authority or parliamentary law that would sustain his decision, but failed to do so.

98. Q. State whether or not on the night of October 17, 1903, when the committee on credentials made two reports—that is, a majority and a minority report—any motion was made by any one. If so, by whom?—A. There was a motion made by Mr. Yarberry, of Adair County, to the effect that the convention should first speak up and dispose of the contest as to who was the rightful delegates from Pulaski County.

99. Q. State whether or not that motion was seconded and put to the house by said J. N. Sharp.—A. It was seconded.

100. Q. State whether or not it was put to a vote of the convention by said J. N. Sharp.—A. It was.

101. Q. State whether or not the said J. N. Sharp permitted either delegation in the county of Pulaski to vote on that motion. And if so, which delegation did he allow to cast the 41 votes of Pulaski County on said motion?—A. He allowed the delegates from Pulaski County favorable to Edwards, bearing the credentials for J. Sherman Cooper, to cast the 41 votes of Pulaski County against the motion or resolution.

102. Q. State whether or not that said vote was challenged and the attention of the chair called to the point that the county of Pulaski had no right to vote in a matter affecting its own interest.—A. The vote for the delegates above mentioned was challenged on the ground that there was two contesting delegations from Pulaski County, and that so long as the contest between them was undetermined neither had a right to vote upon a question affecting the interest or rights of Pulaski County.

103. Q. What was the ruling of the chair on that question?—A. Ruled that the contesting delegation of Pulaski County, unfavorable to Edwards, had the right to vote, and that the other delegation had no right to vote.

104. Q. Was or not that ruling in the interest of, and in favor of, D. C. Edwards?—A. It was.

105. Q. State whether or not there was any appeal requested from the decision of the chair?—A. There was an objection made and an appeal recommended to the house; the appeal was refused and denied by the chairman, J. N. Sharp.

106. Q. State what occurred after the ruling of the chair on said question.—A. The report of the committee on credentials was taken up under the decision of the chairman, that the report of the committee on rules and order of business that had been carried in the convention provided that the counties having contested be taken up in alphabetical order. Jackson County was then called, and given fifteen or twenty minutes on a side to discuss their respective claims. The discussion between the parties as to who were the rightful delegates and it was in progress when a motion was made to adjourn to London, Ky., on the 19th day of October, 1903, and vote was taken upon this motion. The motion was lost, so declared by the chairman. The discussion that was in progress at the time this vote was taken was then continued, and while it was in progress and before it was determined a second motion to adjourn was made over an objection as a point of order, made by Judge Denton, Somerset, Ky., and myself, and the motion was put to the house and moved by the chair and declared to be correct.

107. Q. Upon what ground was the point of order made by Judge Denton and yourself that the second motion to adjourn was not in order?—A. It was made upon two grounds; first, that the convention had been called to meet at Middlesboro, Ky., and could not under the call meet at any other place; second, because under the rules of order adopted by the convention, and also adopted by the governing authority of the Republican party, a second motion to adjourn was not in order unless and until some new business had been transacted by the body, and also upon the ground that the convention was still in a chaotic condition in regard to its organization, there having been only a temporary organization effected, with numerous contests pending, and that such an organization had no right or authority to adjourn the convention to another point and place other than that designated in the call.

108. Q. Do you remember who it was that made the second motion to adjourn?—A. It was made by a delegate from Perry County and Mr. Eversole, I believe.

109. Q. Do you refer to Cash Eversole?—A. I think so.

110. Q. Did you or not see anything of Mr. D. C. Edwards at the time said Eversole made that motion; if so, what was he doing?—A. Just prior to the time the motion was made I saw Mr. Edwards on the left-hand side of the hall in the aisle next to which Mr. Eversole was sitting. Mr. Edwards was pacing the floor in a disturbed and agitated manner. He came to Mr. Eversole and leaned over and seemed to be whispering to him; but whether or not he was I can not say. Immediately afterwards a motion to adjourn was made.

111. Q. Did you see Mr. Eversole's position in the hall when he made that motion?—A. I did.

112. Q. How near to him was the said D. C. Edwards?—A. Very close to him.

113. Q. What was his manner at that time?—A. He was urging him to continue in the effort to have the motion put to the house.

(Attorney for contestant Edwards objects.)

114. Q. Why do you speak of left-hand side of the aisle?—A. I mean the right-hand side of the hall as you front the stage.

115. Q. How near to the platform or stage were Mr. Eversole and Mr. Edwards?—A. When I first saw them Mr. Eversole was sitting either on the front row of seats next to the stage, or second row, I am not certain which. They afterwards moved nearly to the stage, and at one time, as my memory now is, Mr. Eversole was on the stage, in the right-hand corner.

116. Q. Do you remember how he got up on the stage or platform?—A. My impression now is, but I will not say positively, that he was assisted on the stage by Mr. Edwards and possibly someone else.

117. Q. Did said convention adjourn when Mr. Sharp, the chairman, was declared?—A. I do not consider that it did.

(Attorney for contestant Edwards objects to question and answer.)

118. Q. Well, what was done then?—A. A number of the delegates favoring Mr. Edwards left the hall, but refused to participate any further in the proceedings of the convention. The delegates instructed to vote for Mr. Coe, Doctor Young, W. R. Ramsey, and W. Godfrey Hunter remained in their seats.

119. Q. How about the delegates for E. L. Stephens?—A. A number of the delegates from Whitley County who had been instructed to vote for Mr. E. L. Stephens also remained in their seats; some of them, however, left the hall.

120. Q. Then what occurred?—A. The convention then proceeded to elect a chairman and secretary.

121. Q. Who was elected chairman?—A. Judge Rice was elected chairman, who is from Middlesboro, and Lilburn Phelps, of Russell County, secretary. The convention then proceeded with the usual course of business, taking up the contested counties in their order. The contest was settled and the other parliamentary business transacted. The chair then called for nomination of the candidates for Congress. Nominations were made, roll called, and then vote taken.

122. Q. Please state who were placed in nomination before the convention.—A. Hon. W. Godfrey Hunter and Hon. W. R. Ramsey.

123. Q. What was the result of the vote?—A. The result of the vote was that W. Godfrey Hunter received the majority of the votes cast and was declared nominated.

124. Q. After the vote was taken which showed his nomination, was or not any motion made or carried declaring him to be unanimously nominated by the convention?—A. Such a motion was made and carried unanimously.

125. Q. Was there any further business transacted by the convention?—A. There was a motion made that the convention adopt the log cabin, official emblem of the Republican party, for its device; that said Hon. W. Godfrey Hunter's name should be placed thereunder as a Republican nominee for Congress—this upon the official ballots.

126. Q. Was that motion adopted?—A. It was carried and adopted.

127. Q. What was then done by the convention?—A. Motion made to second it, and carried.

128. Q. State whether or not there was at any time during said convention from the beginning to the close thereof, that the business of said convention could not be conducted by the chairman and those connected with the convention.—A. There was not. The convention was one in which there was considerable excitement, some cheering, and the usual speech making and excitement incident to a hotly contested convention, but there never was a time when a speaker could not gain the floor or was not permitted to speak, or when a motion could not be put by the chair, roll called upon it, and the result ascertained.

129. Q. State whether or not anything was done, or was observed by you, by the delegates assembled there in the convention or by any other person in the hall during its proceeding that intimidated the civil authorities of the city of Middlesboro or threatened personal violence to the chairman of said convention or to the delegates thereof.—A. There was not. There was, however, several altercations in words only between various delegates. No blows were struck, no one armed or injured during the discussion. As to Jackson County, a speaker on the stage and one back in the audience added a heated discussion, and one or two personal allusions passed as to their integrity, but these difficulties had been settled at the time the motion to adjourn was made.

130. Q. Was or not any of said altercations or personal controversies between delegates pending before the convention at the time said motion was made to adjourn by Judge Eversole?—A. There was not. They had ended.

131. Q. What candidate did you support in said convention?—A. I supported W. Godfrey Hunter.

132. Q. Was there or not any scheme or predetermined arrangement on the part of the supporters of W. Godfrey Hunter to break up said convention or to cause an adjournment to London, Ky.?

(Attorney for Contestant Edwards objects to same.)

A. There was not. There was not any personal communication with Doctor Hunter and those who were directing and had the control of his affairs before the convention; no such plan or arrangement was ever dreamed of or contemplated, but on the contrary, it was the desire of Doctor Hunter and his friends to conclude the business of the convention where it was then located, and not to go to the home of D. C. Edwards, London, Ky., a contending candidate.

133. Q. How far was London, Ky., situated from Middlesboro, Ky.?—A. About 60 miles.

134a. Q. Do you know what is the distance from one end of the Congressional district to the other in territory?—A. I should think it was nearly the distance of the breadth of the State of Kentucky.

134b. Q. Is it or not something like 300 miles?—A. I should think it was fully that much.

135a. Q. If there had been personal altercations and difficulties pending in the convention at the time said motion was made to adjourn, if the convention composed of the same delegates adjourned to London, Ky., would or not the hurried removal of the convention from Middlesboro to London, Ky., prevent the occurrence of such controversies or altercations?

(Attorney for Contestant Edwards objects.)

A. I can not say positively; don't think anyone else could.

135b. Q. State whether or not anything occurred during the entire proceedings of said convention, from the time it was called to order on Saturday morning until it adjourned after having nominated W. Godfrey Hunter for Congress, that made it appear that there was great danger of bloodshed or loss of life if the convention remained in session at Middlesboro.—A. Don't think there was. I was present throughout the entire convention. I saw several persons who were drinking, and I heard several altercations in words only between delegates, but I never saw anything that led me to fear that there would be any violence in the convention or any lawlessness or riot which would prevent the convention and its members safely transacting their business.

136. Q. State whether or not you saw any effort made to do any personal violence to J. N. Sharp while he acted as temporary chairman or heard any threats made to him in violence.—A. I saw not one attempt in violence against Mr. Sharp and I heard no one threaten to do him a personal injury.

137a. Q. State whether or not you heard on the part of delegates to said convention any criticism of said Sharp on account of his unfair and partial ruling while acting as temporary chairman of said convention.—A. I heard numerous persons criticise the ruling of the chair. This criticism was not confined to any one set of delegates. I heard the chairman referred to as Redwine and as czar, and some statements that Gobelistic tactics were being employed.

137b. Q. What do you understand or consider the language "Redwine" and "czar" to mean?

(Attorney for Contestant Edwards objects.)

A. Those two expressions that were used are understood throughout Kentucky, and has a well-settled meaning and is part of the political language of the State, meaning a suppression of the rights and privileges of the convention and the usurpation of the authority of the delegates by the chairman, and I understood them in that sense.

138. Q. Do you know what claim, if any, was made after said convention by J. Sherman Cooper as to the authority that he had as chairman of the Eleventh Congressional district?—A. Mr. Cooper claimed that he, acting by himself and not with the other eighteen members of the district committee, was the sole governing authority in the said district, and that he had the right himself, without reference to the judgment of any other committeemen, to decide who was the lawful and legal nominee for the Middlesboro convention, and that he was the governing authority.

139. Q. Claiming such power to himself, who did he claim was the nominee for Congress in the Eleventh Congressional district?—A. He claimed that D. C. Edwards was the nominee.

140. Q. Do you know in what counties at the special election held November 10, 1903, the official ballots had the name of W. Godfrey Hunter under the Republican party emblem—the log cabin—and the counties in which the said ballots had the name of D. C. Edwards under the log cabin as the Republican nominee for Congress in said district?—A. I do.

141. Q. If so, how many counties had the name of W. Godfrey Hunter under the Republican party emblem, and how many had the name of D. C. Edwards under the Republican party emblem?—A. W. Godfrey Hunter's name was under the Republican party emblem in 5 of the counties in the district, and D. C. Edwards's name was under the Republican party emblem in 14 counties in the district.

142. Q. Whose name was on the official ballot under the log cabin, the Republican party emblem, in the county of Wayne in said election?—A. D. C. Edwards's name was under the log cabin in Wayne.

143. Q. Whose name was under the log cabin under the Republican party emblem in the county of Monroe?—A. D. C. Edwards's.

144. Q. How did those two counties go in the election November 10, 1903, in the race for Congress?—A. They were both carried by W. Godfrey Hunter.

145. Q. How were those who desired to vote for W. Godfrey Hunter in those two counties compelled to cast their vote?—A. Under the well-known provision of law giving the voter the right to write the name of any person for whom he desired to cast his vote in a space provided for that special purpose upon the official ballot.

Adjourned until 7.30 a. m. March 24, 1904.

MATTIE H. KEEN,
Notary Public, Pulaski County, Ky.

Met pursuant to adjournment this March 24, 1904, and continued with the deposition of EDWIN P. MORROW.

146. Q. State whether or not you are acquainted with the people of Wayne and Monroe counties, and also people of Pulaski County?—A. I am acquainted with the people of Wayne and people of Pulaski, but not acquainted with the people of Monroe County.

147. Q. State what you know as to the intelligence and education of the people of Wayne and Pulaski counties and their general information.—A. I think that the people of Pulaski County, taking them on an average, are as intelligent and as well educated as the people in Wayne County; possibly more of them in Pulaski County are able to read and write than there are in Wayne County out of the same number of people.

148. Q. Do you know the result of the vote taken in said special election, November 10, 1903, in the county of Harlan, where W. Godfrey Hunter's name was under the log cabin on the official ballot?—A. It is my impression now that that county was carried by Mr. Edwards, though not certain.

149. Q. State whether or not that the name of John D. White was printed under the device double log cabin on the official ballots in all of said counties in said district.

(Attorney for Contestant Edwards objects.)

A. That is my information.

150. Q. State whether or not it is true that although D. C. Edwards had his name on the official ballots under the log cabin, the Republican party emblem, in the counties of Owsley, Perry, Clay, Letcher, said counties were carried at the special election November 10, 1903, by John D. White.

(Attorney for Contestant Edwards objects to answer.)

A. That was my information, derived from the count of votes that was reported by the collector commissioner.

151. Q. Referring again to the Middlesboro convention, please state, if you can, whether or not any question arose in said convention in taking the vote of Whitley County, in the election of a temporary chairman, as to how that county should cast the vote. If so, what was the ruling of J. N. Sharp on that question?—A. Upon the call of the counties, Doctor Moss, of the Whitley County delegation, cast the entire vote of Whitley County for J. N. Sharp, and Whitley County was entitled to 36 votes; to the casting of this vote several members of the Whitley County delegation objected on the ground that they desired to cast their votes for L. D. Denham. I think there was present about twelve delegates representing Whitley County; at least half of these arose and changed their votes. The chair ruled that they had only the right to have their individual votes counted for L. D. Denham, and that they could not and were not entitled to cast their pro rata share of the absent vote of the county.

152. Q. According to the ruling of the chair on that question then, if they had been but two delegates from Whitley County, which county had a vote of 36 in the convention, what would have been the result?

(Objected to by attorney for Contestant Edwards.)

A. The result would have been that one man, acting as chairman of that convention, would have been entitled to cast 35 of the delegated votes of Whitley County and the other only his own personal vote.

153. Q. State whether or not, after the county clerk of Pulaski County had printed on the official ballots the name of W. Godfrey Hunter, under the Republican party emblem, the log cabin, and distributed said ballots to the various voting precincts in Pulaski County, it was generally understood by the people that D. C. Edwards was still a candidate for Congress, and whether or not his friends and supporters informed the voters in the different precincts how to vote for said D. C. Edwards, if they so desired.—A. During this time circuit court was in session in Somerset, with the usual crowd of persons from various sections and precincts of the county attending circuit court. It was well understood and thoroughly known by the people of Somerset, by the various precincts attending circuit court, and other persons come into Somerset on Saturday and Monday preceding the election, but a great many prior to those dates, that no matter what was the outcome as to who should go on the ballot, that Mr. Edwards was still candidate and desired the votes of his friends and followers. It was made known to the people generally, that as far as they were able to do so by the numerous friends and supporters of D. C. Edwards in this county, and it is my belief that such was the general information throughout the entire county upon the day of this special election.

(Attorney for Contestant Edwards objects to question and answer.)

Cross-examined by J. W. Alcorn, attorney for contestant:

1. Q. You are now a very ardent supporter of Doctor Hunter, are you not?—A. I am one of Doctor Hunter's friends.

2. Q. And you were during the campaign of last fall?—A. I was.

3. Q. You were one of his advisers in this county and at the Middlesboro convention, were you not?—A. I was.

4. Q. When the crowd assembled in the circuit court room in the court-house was it not largely composed, or, if not almost entirely composed, of Hunter men?—A. I think the large majority of persons in the court room was favorable to Hunter.

5. Q. Had not proclamation been made from the upper portico of the court-house, and on the streets immediately after the close of the count of Hunter's column, for all of the friends of Doctor Hunter to go at once to the circuit court room?—A. I heard no such proclamation. At the time that the court room was filled I was watching the Edwards line.

6. Q. Did not the friends of Doctor Hunter rush at once to the court-house as soon as the count of their line was ended?—A. I was not present when they went into the court room. I went into the court room after the room was well filled.

7. Q. When you went in could as many as 200 more persons been admitted to that room?—A. I can not say that there could have been that many admitted. There was some vacant seats left possible on the three sections of the court-house.

8. Q. Was not the court-house already pretty well filled with voters in there?—A. Yes, sir.

9. Q. How many persons in there?—A. I should think there was about 350 or 400 people.

10. Q. Did they continue to come in after you went in?—A. Some came in and some went out.

11. Q. At the time that Mr. R. C. Tartar came into the court room was there not a perfect jam in the court room?—A. The aisles were crowded and the front part of the court room, or where the bar is located, was crowded, but there was a number of vacant seats.

12. Q. How many?—A. Possibly as many as one dozen seats.

13. Q. Could as many as 100 men then obtain admission to the court room?—A. I believe they could.

14. Q. How many more?—A. Not many more.

15. Q. Did either Mr. Napier Adams or Judge J. Sherman Cooper make any report to the men who were assembled in the circuit court room?—A. They were requested to do so. Whether they did or not I do not know—do not think they did.

16a. Q. Who requested them?—A. Mr. R. C. Tartar, who had entered the court room as the adviser of Mr. Edwards, who was a brother-in-law of Judge Cooper, an active worker for Mr. Edwards and one of his lieutenants on that occasion, to notify Mr. Cooper and the other tellers that we were awaiting their report and we insisted that they come to us and he insisted that we go to them.

16b. Q. Was any arrangement made previous to the count as to how any difference in the report of the tellers should be settled?—A. Not that I heard.

17. Q. Now, is it not a fact, Mr. Morrow, that it had been previously arranged among the supporters of Hunter that immediately after the count of the Hunter votes that they would rush to and occupy the court room, and if there was a difference in the count of the report of the tellers that they would then vote for that report that was most in favor of Hunter?—A. There was no such an agreement. If there was I am confident I would have known of it.

18. Q. If the tellers had made a report to that meeting, and in that report the tellers on behalf of Hunter had reported a majority in his favor and the tellers in behalf of Edwards had reported a majority in his favor, how would that controversy been disposed of in that meeting?—A. I believe that if the people had been given opportunity to have settled that question that in the light of the facts they would have determined it in favor of the Hunter delegation.

19. Q. Is it not a fact that at least nine-tenths of the men then in that circuit court room were ardent supporters of Doctor Hunter?—A. I expect they were.

20. Q. Is it not a fact that the supporters of Mr. Edwards were then assembled in front of the court-house?—A. Do not know positive; heard they were.

21. Q. There was no motion made by any of Hunter's supporters in the circuit court room that they go and make the report to the meeting in front of the court-house, was there?—A. Not that I heard.

22. Q. Who made the agreement as to how the relative strength of the two candidates could be ascertained?—A. My belief now is that Judge Catron and Judge Cooper, representing Mr. Edwards, and Judge Denton and T. M. Scott, representing Hunter, made the agreement.

23. Q. Was not Ed Parker and W. R. Ramsey then avowed candidates for the nomination for Congress?—A. I heard so.

24. Q. Had they not published in the papers of the district the fact that they were candidates?—A. Not that I know of; but neither of them were representing this county by any person acting for or on behalf of them.

25. Q. Can you say that neither of them had any supporters in this county?—A. Not that I know of.

26. Q. Was it not a recognized fact that Parker and Ramsey were both running in the interest of Doctor Hunter?—A. Was not, so far as I know.

27. Q. I here show you "Exhibit A," in the deposition of N. L. Barnett, and ask you if that was published in the Somerset Republican preceding the meeting of the election here in Somerset.—A. This exhibit shows such publication, but I do not remember to have ever seen it before.

28. Q. You were then a subscriber to and reader of the Somerset Republican?—A. I can not say that I was. I was not a subscriber, and very rarely read the paper unless I chance to do so.

29. Q. It was then regarded as the Hunter organ in Pulaski County, was it not?—A. I believe the paper was favorable in its publications to Doctor Hunter.

30. Q. Who called the convention at Middlesboro to order when it convened on the 17th day of October, 1903?—A. J. Sherman Cooper.

31. Q. You have spoken of contests in that convention from Pulaski, Jackson, and Letcher counties. Now, is it not true there was a contest from Knox County?—A. There was.

32. Q. Is not this the rule of the Republican organization in Kentucky in regard to the conduct of conventions, to wit: "Whenever there is a contest as to the right to a seat in any conventions, that delegation selected by the convention called to order by the regular officials of the party pursuant to the official call for said convention shall be admitted until the contest is settled, and may vote on all questions except as to the right to a seat in the convention in which it is sitting?"—A. I think that is a point of law.

33. Q. An that was at that time a party law?—A. Yes, sir.

34. Q. Then when the convention was called to order is it not a fact that Chairman Cooper recognized as the delegations from the counties of Jackson, Knox, Letcher, and Pulaski, those delegations showing credentials from the convention called to order by the regular official of the party pursuant to the official call for the convention?—A. Yes, sir; I think that is a fact with the exception of possibly Pulaski County, whose credentials were not signed by the regular ordered secretary of that county.

35. Q. Were any of the credentials from Jackson, Letcher, or Knox signed by the secretary of the convention?—A. I can not say.

36. Q. Is it not a fact that Chairman Cooper announced that the credentials of the delegation from Pulaski which he recognized as entitled to seats in the convention were signed by the convention which he as chairman of the county committee had called to order?—A. Yes, sir.

37. Q. Is it not a fact that the Knox County delegation, which he recognized as entitled to seats in that convention, were instructed against Mr. Edwards?—A. Yes, sir.

38. Q. Is it not a fact that the contesting delegation from that county was known to be supporters of Mr. Edwards?—A. I think so.

39. Q. Please name the persons who composed the committee on credentials in the Middlesboro convention.—A. Robert Boyd, Lilburn Phelps, Crit Brady, E. N. Ingram, W. B. Kolker; there were seven of them.

40. Q. How many of the members of the committee on credentials signed the report, which was made by Boyd as chairman?—A. Four.

41. Q. Who were they?—A. Boyd, Ingram, Cochran, and one other.

42. Q. Is it not a fact that it was generally recognized in the Middlesboro convention that the so-called contest from Laurel was nothing more nor less than a farce comedy?—A. Never knew of the merits of the Laurel County contest, it never reached the question, and I was not before the committee on credentials in regard to it.

43. Q. Was it not known in and about the convention that at the Laurel County convention about 800 of the voters who took part in the convention supported Mr. Edwards, there were only 25 or 30 took part in the so-called convention, which named the contesting delegation from Laurel County?—A. It was generally known; I had no information in regard to it.

44. Q. Was the delegation of which you and Judge Denton were members recognized or admitted pending the contest?—A. We were never recognized as a body. On several occasions we were recognized individually by the chairman.

45. Q. And so was Mr. Ramsey; was he not a delegate?—A. I do not know.
46. Q. So was Mr. Parker from London.—A. I know he was not a delegate.
47. Q. Well, he was recognized by the chairman as a Republican?—A. Yes, sir.
48. Q. At the time when you and Judge Denton made the point of order on the motion to adjourn to meet at London on the next Monday morning, neither one of you had been admitted as delegates to the convention?—A. No, sir.
49. Q. Or given right to vote in the convention?—A. No, sir.
50. Q. On the vote to adjourn to meet at London at 9 o'clock on the next Monday morning, what was the result of that vote?—A. I have no recollection of the result of it; it was a favorable motion to an adjournment.
51. Q. When the result was announced, did not the chairman then declare the result and declare the convention adjourned to meet at London?—A. He so did.
52. Q. Did he then leave the hall?—A. Do not know.
53. Q. Did not Mr. Boyd, the secretary, leave the hall?—A. Do not know.
54. Q. Did not a large number of delegates leave the hall almost immediately?—A. Yes, sir.
55. Q. What Edwards delegates remained?—A. I think several gentlemen remained from Whitley County. Mr. Roscoe C. Tartar remained part of the time. Some of the delegates from other counties who had been voting for Mr. Edwards remained at the rear end of the hall and in the aisle.
56. Q. Did they take any part in the proceedings after that adjournment?—A. Do not think so.
57. Q. Now, Mr. Morrow, by what majority was Mr. Sharp elected chairman of the convention?—A. By a very small majority; either 15 or 23, I have forgotten which.
58. Q. Is it not a fact that all of the Edwards supporters in that convention voted for him?—A. Yes, sir.
59. Q. Is it not a fact that all of the Edwards men voted for Mr. Denham?—A. No, sir; I do not think so, and do not think that is correct. I think the delegation from Whitley was in favor of Doctor Hunter, but some personal matters taking into consideration the vote for chairman, both gentlemen coming from Whitley County, and some other matters which arose over the chairman claiming the right to cast all the absent votes, made it uncertain as to who Whitley County really was for and to whom the majority of their strength would go upon a final vote between Doctor Hunter and Mr. Edwards. Whitley County had a candidate from their own county for nomination.
60. Q. What was the result of the vote on motion to table the amendment to the report of committee on rules?—A. The motion to table the amendment was carried.
61. Q. Did not the same delegation and delegates who voted for Sharp for chairman vote in favor of that motion?—A. Can not say they did.
62. Q. Can you say they did not?—A. Yes, sir.
63. Q. What was the vote on the motion to take up the contest of Pulaski County first?—A. The motion was lost.
64. Q. How much majority?—A. Do not know.
65. Q. Was not that motion lost by the votes of the same delegates and delegations who had voted for Sharp for chairman?—A. Do not think it was. My impression that on that question the majority was smaller than Sharp's had been. I believe there was a change of some county or part of county, though I am not quite certain about this.
66. Q. Is it not a fact that on that vote Whitley County voted solid against the motion?—A. No, sir.
67. Q. At what hour of the night was the adjournment had, as declared by Chairman Sharp?—A. 11.30, or it may have been a few minutes earlier or a few minutes later.
68. Q. You said in your examination in chief that London was the home of Mr. Edwards; was it not also the home of Mr. Ramsey?—A. Yes, sir.
69. Q. Was not Mr. Ramsey a prominent lawyer and well known?—A. He is.
70. Q. Was it not also claimed by Ed Parker as his home?—A. It was.
71. Q. Is not Mr. Ramsey a native of that county?—A. I think so.
72. Q. A man in good standing in that community?—A. Yes, sir.
73. Q. Mr. Parker had lived in London for many years until shortly before that?—A. Yes, sir.
74. Q. Mr. Edwards only about fifteen years?—A. I have heard that is all he has lived in that county.
75. Q. Is not Middlesboro on the extreme eastern border of the State?—A. It is.
76. Q. Is it not a fact that for three years the Republican convention had been called and held at London?—A. Several held in London to my knowledge.

77. Q. Had you ever heard of any party convention being held at Middlesboro except that which met one night and nominated George Stone in 1896 as a Democratic candidate for Congress?—A. All that I remember now.

78. Q. Is it not a fact that even the Democrats, with that exception, have generally held their conventions at London heretofore?—A. Can not say it is.

79. Q. You said in your examination in chief, in your opinion there was no danger for a convention to continue in session at Middlesboro; now, is it not a fact that a good deal of drinking was there that night?—A. There was considerable drinking, but no more than usual to attend a large gathering of men.

80. Q. Did not Middlesboro at that time have the reputation of having within its boarders a large number of the tough element of the population of Kentucky?—A. I can not say that I knew that Middlesboro had such a reputation or character.

81. Q. Did you not see in the convention hall that night a considerable number of persons who you recognized as residents of Middlesboro, and who were evidently under the influence of liquor?—A. Only two that I now remember.

82. Q. Was there not nearly all the time during that evening of the convention a number of persons assembled in the back part of the hall, whooping, yelling, and denouncing Sharp and jeering at every vote announced in Edwards's interest?—A. There was considerable criticism indulged in in regard to the ruling of the chairman. This seemed to come from all parts of the house. I can not say it was confined to the end of the house.

84. Q. Did you hear any such talk that in the event the sitting delegation from Knox County was ousted there would be serious trouble in the convention?—A. I heard it said by various persons that the contest in Knox County was a sham and a farce and would be outrageous on the part of any deliberative body to deprive the delegates of their seats, but I heard no threats of any personal violence of any character.

85. Q. Did you not hear it claimed by the contesting delegation of Knox County that in the county convention three to one of the Republicans then present was in favor of Edwards, but that the chairman refused to entertain a motion for division or to allow any motion to instruct for Edwards?—A. No, sir; the contest from Knox County generally claimed to be—

86. Q. You mean the supporter of Hunter?—A. Yes, sir.

87. Q. Do you know Mr. John G. Matthews?—A. No, sir.

88. Q. Do you know Jesse Tuggle?—A. No, sir.

89. Q. Do you know Mr. W. W. Byrley?—A. I believe I met him.

90. Q. Did you not hear him say that he would use his pistol before he would be ousted from his seat?—A. Did not hear him.

91. Q. He was the chairman of the sitting delegation from Knox County?—A. Do not know.

92. Q. Sheriff of the county?—A. I think so.

93. Q. You have stated that you thought that Hunter had a majority of the delegates from Letcher County; are you certain?—A. I believe I am not, from my personal knowledge, but from information which I had at the time, that I had reason to believe it was correct.

94. Q. I will ask you if it is not a fact that with one exception, possibly two, the Letcher County delegates voted all the time with the Edwards men on questions that came before the convention?—A. I do not remember, but do not think so.

95. Q. How was the Perry County delegation?—A. It had voted in the morning for the chairman of Hunter's choice and shifted its vote once or twice during the day.

96. Q. Who was the chairman of that delegation?—A. Mr. Cash Eversole, I think.

97. Q. Were you in any council or consultations that Doctor Hunter held with his friends during the Middlesboro convention?—A. I was.

98. Q. Who else was present?—A. I can not say; there were several consultations held.

99. Q. Where held?—A. Some in the convention hall, some in Middlesboro Hotel, or the office of the Middlesboro Hotel.

100. Q. Were you in Mr. Colson's office?—A. Not that I know of.

101. Q. Were you not in the consultation in Mr. Colson's office?—A. I was present following the convention.

102. Q. Who was present?—A. Mr. Lilburn Phelps, Hearst, myself, possibly Judge Rice, and I think Major Hepburn was there part of the time.

103. Q. Was M. H. Rhorer there?—A. I think he was.

104. Q. Where did he reside?—A. At Middlesboro.

105. Q. What was his political affiliation?—A. I have heard, a Democrat, gold or silver, I do not know.

106. Q. Is it not a fact that he has been for years connected with the Democrat organization in Kentucky?—A. Do not know.

107. Q. Do you not know for several years he was a member of the State executive committee from this district?—A. Do not know.

108. Q. Had not Judge Rower in that consultation stated that he and Secretary Hill had intimate personal relations?—A. If he did I never heard it.

109. Q. Who named Judge Rice for chairman of the convention or meeting which was held in the hall after the adjournment had been announced by Chairman Sharp?—A. I have forgotten who it was.

110. Q. Who called the meeting to order?—A. I think there were several who called it to order.

111. Q. Did you nominate Judge Rice?—A. Don't think so.

112. Q. Did not Judge Denton?—A. I believe he did, or Major Helburn.

113. Q. Is Judge Rice the same man who had on one or two occasions turned off the lights at the sitting of the convention?—A. There was one bunch of lights turned off once, but don't think the lights were ever turned off. Whether Judge Rice had anything to do with that I do not know.

114. Q. How long did you remain in Middlesboro after the convention adjourned?—A. I remained until Sunday, the evening following.

115. Q. Sunday evening or Sunday morning?—A. On 8 o'clock train Sunday evening.

116. Q. Did you see C. W. Metcalfe on that train?—A. I believe he was on the train.

117. Q. Was Doctor Hunter on that train?—A. Yes, sir.

118. Q. Did you see him and Doctor Hunter talking together?—A. I believe Mr. Metcalfe was the man sitting talking to Doctor Hunter, Judge Rhorer, and myself.

119. Q. Do you know the politics of Mr. Metcalfe?—A. Do not.

120. Q. Is it not a notorious fact that he is a Democrat?—A. I believe I have heard it stated once he was, by Edwards, in a public speech.

121. Q. He is a lawyer and a man of some prominence at Pineville?—A. Yes, sir.

122. Q. Judge Rhorer is a lawyer and a man of some prominence at Middlesboro?—A. Yes, sir.

123. Q. Did you hear Mr. Metcalfe say where he was going?—A. Did not.

124. Q. Was he still on the train at Junction City?—A. I left the train at Corbin.

125. Q. Still on the train then?—A. Yes, sir.

126. Q. Judge Rhorer was also on that train?—A. He was.

127. Q. He and Mr. Metcalfe together?—A. They were.

128. Q. And engaged in talking to Doctor Hunter and to you?—A. They were.

129. Q. When you left the train at Corbin was he still with Mr. Metcalfe and Judge Rhorer?—A. I suppose so.

130. Q. Was there any considerable number of persons on that train that night?—A. There were. We were in a sleeping car. There were one or two newspaper correspondents there, Mr. Lilburn Phelps, two of Doctor Hunter's sons, and another gentleman from Louisville, and the persons before named, who constituted one party. Besides them, there were several other people in the sleeper.

131. Q. Were there not a number of returning delegates in the front of the sleeper?—A. Very few, I think. I think all of the delegates had left before.

132. Q. You mean all or most of them?—A. Most of them.

Adjourned until 1 o'clock p. m.

133. Q. When did you first learn that Hunter's name had been printed under the Republican party emblem on the official ballots for this county?—A. I believe it was on Saturday preceding the election.

134. Q. Had the county court clerk, May, told you before of his intention to have Hunter's name printed under the party emblem of the official ballot?—A. He had not.

135. Q. From whom did you learn first that Doctor Hunter's name had been printed under the party emblem on the official ballots?—A. I believed I ascertained it through general rumor, or through a statement of some one who had got their information from the printer.

136. Q. You got no information from the county court clerk?—A. I think not.

137. Q. And you were not told by the printer?—A. Not in person.

138. Q. How did you derive the information, of which you spoke, as to what course the friends of Edwards were pursuing towards informing the people of his candidacy at the election?—A. From the action of his reporters and their conduct; from the strenuous efforts which I knew and was informed that they were making all during the week preceding the election—Friday, Saturday, Sunday, and Monday before the election—and from various other sources and information.

139. Q. Did you, either on the Monday before the election, or the Sunday before the election, or on the day of the election, visit any of the precincts other than those of Somerset?—A. I did.

140. Q. What precincts?—A. Through the lower precincts of the county and along the Monticello road to the extreme part of the county on Sunday and Saturday preceding the election. I was in several precincts of Wayne County on Sunday.

141. Q. On Monday preceding the election and on the day of the election what, if any, precincts in Pulaski County did you visit other than those of the city of Somerset?—A. Caney Fork precinct and, I believe, partially in the Rush Branch precinct. However, it is a voting place.

142. Q. Did you go there for the purpose of canvassing for Doctor Hunter?—A. I was there in his interest.

143. Q. Did you tell all the Republicans you met that Doctor Hunter's name had been printed on the official ballots under the party emblem?—A. I did.

(The witness then commenced to explain, and the counsel for contestant said to him that his answer was responsive to the question and he did not desire any further answer. Thereupon the witness, on his own position, and against the objection of counsel for contestant, proceeded to make this statement.)

I also told them that I understood that Doctor Hunter was not under the log cabin in all of the counties.

144. Q. What other precinct than Caney Fork did you visit on Monday, or the day of the election?—A. I am not positive that I visited any other precinct.

145. Q. Were you there on Monday, or the day of the election?—A. The day of the election.

Reexamined by W. R. RAMSEY, attorney for contestee:

1. Q. You were asked with reference to what information you had of the county court clerk, John S. May, as to how the ballots were printed; please state what, if anything, Mr. May did say to you about the ballots.—A. Mr. May said to me on Friday, I believe, that he had not determined whose name he would place under the log cabin, but that he intended to be governed by the action of the Republican State central committee, as he regarded that as the final arbitrator of all questions affecting the Republican party, and that he intended to be governed by the decision of that body.

2. Q. You have stated that you, and certain other gentlemen mentioned by you, were in the office of Colonel Colson just after the Middlesboro convention; please state why you were there and what you were doing.—A. We were there for the purpose of preparing the statements of Doctor Hunter in regard to the Middlesboro convention, to prepare secretary's report, and also to discuss the legal position of the two contestants for nomination for Congress. Judge Rhoer and myself discussed the matter both in Colonel Colson's office and afterwards, under the section of the Kentucky statutes which provided for the settlement of such controversy as was then evidently pending.

3. Q. Was Judge M. H. Rhoer a lawyer in Middlesboro?—A. He was.

4. Q. Please state, if you remember, what was the subject of the conversation on the train when you, Doctor Hunter, Mr. Rhoer, and Mr. Metcalfe were in the sleeper on Sunday night.—A. We were discussing the bearing of the section of the Kentucky statutes that I have just referred to and giving our opinion upon the legal aspect of the contest, which we knew would come between Hunter and Edwards. Judge Rhoer was of the opinion that the certificate of Doctor Hunter should be filed and that Mr. Edwards would also file his certificate, and the matter would then be left to the decision of the Eleventh Congressional committee, and from that body there would be taken an appeal to the State central committee, and that the decision of the highest United States court would be followed by the civil courts in a determination before them.

5. Q. Was Mr. Charlie Metcalf a lawyer at that time?—A. I did not know then that he was.

6. Q. In what part of the convention hall in Middlesboro were the lights out that you have referred to as one bunch?—A. There was a bunch of lights in the arch around the balcony; these lights were turned out, but the lights upon the side of the hall and upon the stage were still on.

7. Q. Is it not true that Middlesboro is a city in the Eleventh Congressional district, which has within recent years grown up?—A. That is a fact.

8. Q. Is it not true that it is a much larger place than the town of London and has greater facilities for the accommodation of a crowd of people than London?—A. Middlesboro is a much larger place, with three times the capacity for entertaining a large crowd of people than London.

9. Q. To refresh your recollection, was it not after midnight, and between the hours of 12 and 1 o'clock, that Chairman Sharp declared the convention adjourned? A. I don't remember; it may have been at that time; I had no watch.

10. Q. Is it not true that J. Sherman Cooper, before J. N. Sharp was made temporary chairman, and the said J. N. Sharp, after he was made temporary chairman, recognized and permitted the delegation from Casey County, over objections made, to vote and participate in the temporary organization, and on motion made before said convention, without producing any credentials at all signed by anybody?

(Attorney for Contestant Edwards objected because it is in chief.)

A. Such is the fact.

11. Q. Do you remember how many votes were thus permitted to be cast by Casey County?—A. I believe Casey had 13, though I have forgotten the exact number.

12. Q. To refresh your recollection, was it not 18 votes?—A. It might have been; can not state positively.

13. Q. Do you not know it to be a fact that Ed Parker had announced his candidacy for Congress by a telegram sent out from North Yakima, in the State of Washington, immediately after the death of Congressman Boreing?—A. I did not know at the time, but from a speech made here a few days ago, in a public speech, I understand such was the fact.

13½. Q. Is it not true that the credentials of the contesting delegation from the county of Laurel were signed by C. R. Baugh, who was at that time secretary of the Laurel Republican committee?—A. I can not say.

15. Q. Do you not know that in October, 1903, the day the county conventions were held of the different counties of the district, E. L. Stephens, of the county of Whitley, and W. B. Catchings, of London, were also announced candidates for Congress?—A. Yes, sir.

16. Q. Did you not know or hear it claimed by the Laurel County delegation, or some of them, that no resolution was adopted in the Laurel County convention either nominating or instructing delegates to Middlesboro for D. C. Edwards?—A. Not at that time, I did not.

17. Q. Did you hear it claimed that by the resolutions adopted by those who claimed to be instructed to vote for W. R. Ramsey in Laurel County that all good Republicans that might attend said district convention were made delegates thereto?—A. Yes, sir; I heard that contention made.

18. Q. Were you not also informed that the contesting delegation from Laurel County was instructed first to cast the vote of said county for W. R. Ramsey as long as his name was before the convention, and in case he was dropped that the vote of said county should be cast for Ed Parker?

(Attorney for contestant, Edwards, objects to question and any answer thereto.)

A. It is my impression that I received information to that effect.

19. Q. State whether or not on the day of the county convention in Pulaski, which you have heretofore referred to, you noticed any Democrats, illegal voters, repeaters, or residents of other counties participating in the vote for the Edwards men.—A. I saw several Democrats bring crews into the Edwards line, and I saw a number of boys evidently under age pass through the lines. Saw wholesale repeating; one man who was blood relation to J. Sherman Cooper, pass through the line three or four times.

20. Q. Which line now are you referring to?—A. Edwards line.

21. Q. You have been asked with reference to the rules and regulations of the Republican party, in case where there are contested delegations in a convention. State whether or not the question of the order in which the contest in the county of Pulaski should be taken up by the convention was a matter of any importance or affected the right of the delegates from said county as to their seats or their rights thereto.

(Attorney for Contestant Edwards objects to the question and any answer thereto because the party rule expressly provides that a sitting delegation may vote on all questions except as to its own right to a seat in the convention, and does not prevent them from voting on a question which simply confines ultimately their rights.)

A. It was a matter of the highest importance, and did affect the rights of the delegates.

22. Q. Was it not apparent to you and to the other delegates of said convention that it was the purpose of the Edwards men to prevent the contest in Pulaski County from being settled and the rightful delegates recognized in order that under the ruling of said J. Sherman Cooper and the said J. N. Sharp they could have the benefit upon all questions of the 41 votes of Pulaski County?—A. This proposition was evident and apparent to every man in the convention capable of grasping the situation.

23. Q. Really was it not the key to the whole situation?—A. It was.

24. Q. From your knowledge of the rules and decisions of the Republican State central committee, referred to by you as the highest party authority, what has been

the ruling of said State central committee on the question of the right of an appeal from a Congressional district committee to the State central committee where there are two claimants in a Congressional race for the nomination?

(Attorney for contestant, Edwards, objects to question and any answer thereto.)

A. It has been held by the Republican State central committee that the right of an appeal lies from the decision of the district committee to the State central committee; such is the party law.

Recross-examined by Attorney J. W. ALCORN for contestant:

1. Q. When did that become the party law?—A. My opinion, always been, so far as I can remember.

2. Q. You will please point me a single provision in the published rules of the party that so says.—A. I have not the rules with me; if you will provide me with a copy I can possibly find them. I refer you to section 17, rule of the Republican organization of Kentucky, which is as follows: This section contains the following language, viz: "In ruling conventions the party interest of either precinct or county chairman shall be subject to an appeal and provision as herein provided. The decision of the State central committee shall be final and binding on all questions."

2. Q. That is the latter part of section 17, is it not?—A. Yes, sir.

3. Q. I will ask you to go over with me the whole of the provisions of that section, which I suppose are incorporated in this section. Does not that section 17 read as follows, viz:

"Precinct chairmen may be elected by the Republicans in their respective counties in such manner as the county committee in such county may decide upon, either by ballot in the manner of holding Congressional elections or in the manner provided by the State primary laws; otherwise, by mass conventions, at which the viva voce form of voting may be used. The selection of precinct chairmen shall be prior to, and the term of their office shall begin when the district convention of which Congressional district the county is a part, is held, which elects delegates to the national Republican convention to nominate candidates for President and Vice-President, and they shall hold their offices until their successors are elected and qualified.

"The newly elected precinct chairmen shall compose the county committee of the county in which they reside, except in Jefferson County, in which county the county committee shall be composed of one chairman from each five precincts thereof, in each ward of the city of Louisville and that portion of Jefferson County beyond the limits of the city. The said chairman shall be elected in the same manner herein provided, and at the same time and in the same manner there shall be elected in each ward of the city of Louisville and in that portion of Jefferson County beyond the limits of said city one precinct committeeman for each precinct in the several wards and that outlying portion of the county, and the precinct committeemen, together with the county committeemen from the same, shall constitute the ward committee for said ward or legislative committees before mentioned shall be subordinate to the Jefferson County executive committee, and the said county executive committee shall from time to time prescribe the duties of the ward and legislative district committee aforesaid.

"As soon after their election as practicable the members of the new county committees shall be called together for organization by the secretary of the old or preceding committee by written notice mailed to each member elected. When the new committee meets pursuant to the notice aforesaid, the secretary of the old committee shall call for the election of a temporary chairman and a temporary secretary.

"The temporary officers shall then call for nomination for permanent chairman, etc. The committee shall elect, in addition to the permanent chairman, a secretary and a treasurer, who shall serve during the term of the committee unless removed by death, resignation, or cause. The officers of the county committee, or any member thereof, may be removed by the county committee for misfeasance or malfeasance in office after due notice has been given and an opportunity to be heard. All contested elections of precinct chairmen shall be passed upon by the county committee; no member, however, shall vote upon any question affecting his title to the office. But the losing party may appeal to the district chairman. All contests as to the election of county chairman shall be tried by the chairman of the Congressional district in which he lives, but the losing party has the right of appeal to the central committee.

"All contests and controversies shall be tried alone upon affidavits, and when appealed the affidavit shall be forwarded to the proper authority.

"Any ruling that affects the party's interest of either precinct or county chairman

shall be subject to appeal and revision as herein provided. The decision of the State committee shall be final and binding on all questions."

That is that section in full, is it not?—A. Yes, sir.

4. Q. Was the delegation from Casey County composed of residents from Casey County, so far as you know?—A. Mr. Conkling, I believe, is the only person that I knew in the delegation.

5. Q. Was his residence in Casey County?—A. I think so.

6. Q. Do you know Jason Wesley?—A. I do not know him personally, though I have seen him, but did not see him there.

7. Q. Did any Republicans of Casey County contest their right to be admitted as delegates from Casey County?—A. Do not think the objection was made from Casey County.

8. Q. Is it not a fact that the objection was made by Mr. Yarberry from Casey County?—A. I believe so.

9. Q. Is it not a fact that when Mr. Yarberry made that objection Mr. Conkling put his hands in his pockets and announced that his credentials had been stolen?—A. No, sir; he said that they were lost.

10. Q. Did he not then make affidavit?—A. No, sir; I think not.

11. Q. Is it not a fact that Mr. Godby, a Republican of Casey County, announced to the chairman that he knew it to be a fact that Mr. Conkling and those associating with him were duly elected as delegates?—A. Do not know the gentleman referred to. Never heard him make such a statement.

12. Q. Was there any other protest?—A. I think at the next roll call.

13. Q. By whom?—A. Do not remember.

14. Q. You do not say that Mr. Godby did not make that contention?—A. If he did, I did not hear him.

15. Q. Who was that blood relation of J. Sherman Cooper who you say was counted three or four times?—A. Mr. Tartar.

16. Q. Mr. Roscoe Tartar?—A. Mr. Tartar, who lives west of Fishing Creek.

17. Q. What was his given name?—A. Chrisley Tartar, I think.

18. Q. Did you know him at that time?—A. I did.

19. Q. How long had you known him?—A. I only knew him when I saw him.

20. Q. Do you know his standing and character as a citizen?—A. Do not.

21. Q. Describe the general appearance of the man.—A. Do not think I can do so.

22. Q. Can you name any other persons who were counted more than once in the Edwards column?—A. Most of the people who I saw repeating in the Edwards column live in the outer edge of the county; at least I was not acquainted with them.

23. Q. Did you make any objection at the time?—A. Did not, as I knew it to be useless.

24. Q. Were you not there for the purpose of watching for repeaters?—A. I had not gone there for that purpose; went to see if the counting had stopped and found that it had stopped once, but had gone on again.

25. Q. Who was with you?—A. I went by myself on a horse.

26. Q. Can you name any boys under 21 years of age who you saw counted in the Edwards column?—A. I can not now, but I believe I could have done so at the time.

27. Q. Can you name any Democrats who you saw counted in the Edwards column?—A. I can not name any I saw counted, but saw several working in the line.

28. Q. Is it not a fact that Democrats worked for each one of the candidates that day?—A. I think there were some Democrats working in the Hunter line.

29. Q. Who?—A. Major Keen and son.

30. Q. Simply helped get the Republicans in line?—A. Yes, sir.

31. Q. So far as you knew, the Democrats who were helping in the Edwards line were doing the same as Major Keen and his son?—A. So far as I know.

And further this deponent saith not.

EDWIN P. MORROW.

Mr. DUDLEY. The chairman of this district committee was the chairman of the Republican committee of the county of Pulaski, and was ex officio the chairman of the Republican district committee and ex officio the chairman of the State central committee. Perhaps I should reverse that statement, but that is the fact.

Mr. SULLIVAN. That was Cooper? Was he chairman of the State committee?

Mr. DUDLEY. I do not mean the chairman, but the member of the State central committee; and by virtue of that fact he was the chairman

of the district committee, and by virtue of that fact he was chairman of the county of Pulaski. Is that right, Mr. Ramsey?

Mr. SULLIVAN. Yes.

Mr. RAMSEY. That is right.

Mr. DUDLEY. The regulations of the party in the State of Kentucky, as you have heard read in your presence, require, that in the constitution of a convention, that delegation which was elected by the mass convention in the county, called to order by the county chairman, and gathered together under the call of the chairman of the district committee, that delegation created by that convention so called by him to order, shall be recognized in the temporary organization of the district convention. That is correct, is it not?

Mr. RAMSEY. Yes, sir; I think so.

Mr. DUDLEY. I believe that to be exactly the fact. Now, in Pulaski County, a peculiar state of things is brought out by the record. It seems that the county chairman, Mr. Cooper, who was also district chairman, being well known to be a friend and partisan of Edwards, met with other distinguished gentlemen of the party there who represented the interests of Doctor Hunter; and they were all honorable men. They went into an agreement. There was no audience hall in Somerset where the convention might be held that would be large enough for the convention, and so these gentlemen went into an agreement by which the friends of each candidate should be separated and counted outside the court-house; and counting committees were appointed, Mr. Cooper being one of the tellers who counted the Edwards men, if I am not mistaken.

Mr. RAMSEY. Yes, sir; that is right.

Mr. DUDLEY. And it was by his express agreement that this mode of determining who should hold the convention, his friends or Hunter's friends, was determined. Whether it was at his suggestion or not I do not remember, but he was a party to that agreement, and he was in honor bound by that agreement. Do you dispute that assertion?

Mr. ALCORN. No, sir; I do not.

Mr. DUDLEY. Now, Mr. Morrow in his testimony tells how that was held, and I will content myself with citing you to this testimony and asking you to read it. I will ask of the committee, instead of reading this myself, because it consumes so much time, that you will read it, if you have not already done so. I am assuming that you have read it, but if you have not I will ask you to read the testimony of Edwin P. Morrow.

The sum and substance of that testimony is—and that is in every respect corroborated by every witness who testifies about it—that the Republican voters of the county in attendance upon the mass convention were counted by the tellers on both sides. I am speaking now of the county convention, you understand, where there was so much interest on both sides—that it was apparent to both the Hunter and Edwards leaders that they could not get their followers into a hall and hold a mass convention. The result was that Doctor Hunter's friends outnumbered Mr. Edwards's friends by their own count, as testified by several witnesses, and outnumbered them largely, there can be doubt about it, as 1,500 is to 1,000. I think that this is the consensus of the testimony of all witnesses who testify concerning the Somerset convention.

The result of this was that the Hunter delegates were brought into the hall, as many of them as could get in there, and they then held their convention, and it was understood that those credentials should be signed by the chairman. So this convention was held. It was called to order by Chairman Cooper in front of the court-house, and he then announced the agreement I have alluded to.

What did Cooper do then? Instead of following that part of the mass meeting, which was shown to be so largely in majority for Hunter into the hall, as he was in honor bound to do, calling it to order and calling for the election of a chairman and then passing out, he went back on his word, he stopped outside of the court-house and called his people together on the outside of the court-house and held a rump convention, and the delegates from that convention are the ones he himself counts, certifies to, and recognizes at the temporary organization of the Middlesboro convention.

I have said enough to call to your attention the bad faith with which Cooper treated his own people in his own county with regard to that convention, and of the delegates for Hunter who were elected by that regular convention held in the court-house at the place called by Mr. Cooper himself. The larger number held their meeting according to agreement, appointed their secretary and chairman, and elected their 41 delegates to the convention, and they were duly certified; and when they went there Mr. Cooper refused to recognize them. That is all that I have to say about that.

MR. SULLIVAN. It is bad for a man to disavow his own child?

MR. DUDLEY. It is, and it is bad faith, and it brands Mr. Cooper, in my opinion, as a man unworthy of the confidence of his own political party and associates.

MR. ALCORN. I think after you hear me in the morning you will change your opinion.

MR. DUDLEY. I am going by the record.

MR. ALCORN. I beg your pardon for interrupting you.

MR. DUDLEY. I am glad for you to say whatever you think, because I want you to answer, if you can.

MR. ALCORN. Yes; I can.

MR. DUDLEY. Now, I want to call your attention, gentlemen, to the case of *Liggett v. Bates* (50 Pac. Rep.), a Colorado case, in which it is held that—

A nominating convention must meet at the place fixed according to the rules of the party, and a majority of the delegates remaining and meeting in the place designated by the call, after an unauthorized adjournment of the minority to another place, constitute the legal convention.

I want to cite here also 16 N. Y. Supreme Court Rep., 147, the last syllabus. I have just sketched that here. I call attention to this passage. I do not claim that this is on all fours with this case, but the underlying principle is the same, that an undue advantage taken is not to be given effect; and so the court in this case decides. I read as follows from the syllabus:

Previous to the time appointed for the meeting of a county convention to nominate candidates for public office, the county committee, composed with one exception of persons not sympathizing with the *M.* faction of the Republican party, held a meeting and decided to place on the roll of delegates names of persons who had no right to sit in the convention, and that a certain pretended delegate of that faction should be declared chairman. This was done, and the delegates of the *P.* faction of the party were not given the opportunity to be heard. They thereupon convened elsewhere

and duly nominated certain persons. The *P.* faction was composed of at least 30 delegates who were duly and fairly elected, while there were in the convention run by the *M.* faction at most only 20 delegates who were elected.

Held: That the nominees of the convention held by the *P.* faction were the proper nominees, the delegates of the *P.* faction and not of the *M.* faction having been "delegates representing" the Republican party within the meaning of the law of New York of 1890, chapter 262, paragraph 2, and that the court should compel the clerk to print their names on the ballots.

I cite that in support of the proposition advanced by my colleague that the temporary organization at Middlesboro was an evanescent, temporary organization only; that it had no power, no sovereign power, as is affirmed by the gentlemen on the other side. It could not remove or change the duties imposed on that temporary organization as organized by the call. They were there to obey the call and to create a sovereign convention, and they were not a sovereign convention. That is a sound proposition, sound in parliamentary law, sound in politics and in good morals. They might go to another hall, but they had no authority to, and could not go to another town.

Mr. SULLIVAN. Suppose that there was not another hall in the town?

Mr. DUDLEY. They are not called to meet in a hall; they are called to meet in a certain town.

Mr. SULLIVAN. Suppose that there was not another hall in the town, I say?

Mr. DUDLEY. Suppose that there was not any such town as Middlesboro?

Mr. SULLIVAN. That is carrying the proposition too far.

Mr. DUDLEY. Now, my proposition is that the convention was called to meet at the town of Middlesboro. The proposition to have it held in the city of London was voted down and the intention was that it should be held at Middlesboro, and that there was no reason why it should not have been held there has been sufficiently shown here. The legally constituted authority did call it to meet in Middlesboro.

Mr. CURRIER. It did meet in Middlesboro?

Mr. DUDLEY. It did.

Mr. CURRIER. Can you give us any authority to show that a temporarily organized convention can not adjourn? I would like to see that.

Mr. DUDLEY. I have already cited authority that seems to us to be apposite. I would say, as a proposition of law, or rather, as a proposition of good political ethics, which safeguards the party, that a convention called for the town of Middlesboro can not be changed to another town by the temporary organization until it becomes a permanent convention. And the temporary organization is not a convention. It has but one thing to do, and that is to ascertain who are the proper members of the permanent convention. That is all the temporary organization is for. And so long as it exists as a temporary organization it must be at the place and in continuation of the time set in the call, else it is void.

Mr. MILLER. Suppose it was called to meet in Hunter's Hall, in Middlesboro, Ky.?

Mr. DUDLEY. It did not say any hall.

Mr. MILLER. I know, but suppose that is the particular hall, and that is supposed to be the proper place designated, and after the temporary organization is effected, it is discovered that that hall is unsafe.

Do you mean to say that that temporary organization can not adjourn that convention to meet at some other place in the city of Middlesboro?

Mr. DUDLEY. No, sir; because I say that the welfare of the party is preeminent, and it dominates everything else, and the welfare of the party is subserved if the convention is held in the town named in the proper call.

Mr. SULLIVAN. How about the instinct of self-preservation?

Mr. DUDLEY. I say that you are introducing, by these suggestions, things into this discussion which are trivial.

Mr. SULLIVAN. No, sir; not at all. You base it on the logic of the thing apart from authority.

Mr. DUDLEY. The facts are stated in the record, and it is by the record we must talk. The facts are that that convention was called to meet at Middlesboro, and it did meet there, and went on with its business in a reasonable, orderly manner, until some of the delegates saw fit to bolt, and withdraw, whatever their motives might have been. Now, what I undertake to say is, if they had considered their credentials report and had fixed the members of that convention, and the temporary organization had resolved itself into a permanent convention, then it was a sovereign convention, and it might hold its meetings wherever it chose. I will go with you that far.

Mr. SULLIVAN. I think this is important. You have not given us any legal authority, so far as I can understand, for the proposition that a convention, in its temporary stage, can not adjourn; and I wish to ask you what reason exists, what logical or sound reason exists, that enables a convention permanently organized to adjourn, which does not also permit a convention temporarily organized to adjourn, apart from legal authority in the case, which, so far, you have not given us.

Mr. DUDLEY. I again refer you to the Colorado and New York cases.

Mr. LANDIS. You maintain that it is not a convention at all?

Mr. DUDLEY. Not for the purpose of nomination or control of its place of meeting under this call.

Mr. LANDIS. And that it is acting under the district committee?

Mr. DUDLEY. Yes, sir; that is right.

Mr. LANDIS. And that control remains in that body until it becomes a separate entity?

Mr. DUDLEY. Yes, sir.

Mr. CURRIER. The district committee has lost all control after it has issued a call.

Mr. DUDLEY. My colleague calls my attention to Robert's Rules of Order. I read from page 126:

47. *Meeting of a convention or assembly of delegates.*—If the members of the assembly have been elected or appointed as members, it becomes necessary to know who are properly members of the assembly and entitled to vote before the permanent organization is effected. In this case a temporary organization is made, as already described, by the election of a chairman and secretary "pro tem," when the chairman announces: "The next business in order is the appointment of a committee on credentials." A motion may then be made covering the entire case, thus: "I move that a committee of three on the credentials of members be appointed by the chair, and that the committee report as soon as practicable;" or they may include only one of these details, thus: "I move that a committee be appointed on the credentials of members." In either case the chair proceeds as already described in the cases of committees on resolutions. (Par. 46, c.)

On the motion to accept the report of the committee, none can vote except those reported by the committee as having proper credentials. The committee, besides

reporting a list of members with proper credentials, may report doubtful or contested cases, with recommendations, which the assembly may adopt, or reject, or postpone, etc. Only members whose right to their seats is undisputed can vote.

Mr. CURRIER. That has nothing to do with this.

Mr. DUDLEY (reading):

The chairman, after the question of credentials is disposed of, at least for the time, announces "The next business in order is the election of permanent officers of the assembly."

Now, it was while they were considering the report of the credentials committee that this motion for an adjournment was adopted.

Mr. SULLIVAN. That could be considered just as well at London as at Middlesboro. What prevented those other members from following to London?

Mr. DUDLEY. They were called to attend a meeting at Middlesboro and they stayed there and held it, because they believed that it was the proper place.

Mr. SULLIVAN. They voted to adjourn?

Mr. DUDLEY. Some of them did. Take the county of Pulaski, where it is manifest that the bolting mass convention delegates were recognized by Cooper; would you say that they had a right to do that and defeat the rights of the delegates who were properly elected and afterwards were seated?

Mr. SULLIVAN. I would say that all those questions would be settled as well at London as at Middlesboro; that is, if all the members chose to attend at London and assert their rights.

Mr. DUDLEY. All I can say on that is that I do not believe that any member of this committee would want his interests to be handled in any such way as that, or would permit it for an instant.

Mr. LANDIS. I just want to ask you a question. I think it may clear me up a little as far as that is concerned. If there is fraud intended and attempted and the election returns indicate that it was not effective, would fraud, in your judgment, under those circumstances vitiate—

Mr. DUDLEY. No, sir. The decisions of Congress sustain that proposition.

There is one other question I want to glance at just for a moment, and that is this: If the rules of the Republican party in Kentucky are silent as to the right of an appeal—that is, the right of appeal from the district committee to the State central committee, but have in them a provision for an appeal in other matters, thus recognizing that right in those cases, and before an appeal is taken, or any attempt is made to avail oneself of the right the body that constitutes these very rules and regulations—the legislature of the party, if you please, meets and officially declares that an appeal lies to it, and thus construes those rules to authorize an appeal from the district committee to the State central committee, and if the appeal is taken after that action has been taken by the State central committee, and that was in force at the time that the action is taken, how should you defeat that appeal?

Mr. SULLIVAN. Very easily. The case that you put is not justifiable from those rules.

Mr. DUDLEY. I say it is.

Mr. SULLIVAN. If you can find any statement in those rules saying that an appeal is justified, in general terms, I would like to have you read it.

Mr. DUDLEY. I say that it is in general terms. Evidently the State central committee so regard it, because they do not put this down as a new rule, do they?

Mr. SULLIVAN. You can not make a new rule construing an old one.

Mr. DUDLEY. Congress has a right to construe its own rules.

Mr. SULLIVAN. But do you say, because it does construe a rule, that it makes its own construction final?

Mr. DUDLEY. For the purposes of this case it is quite immaterial whether you say they made a new rule or construed an old one.

Mr. WEEMS. General Dudley's argument is based on the supposition that this State central committee is the highest authority in the party in the State.

Mr. DUDLEY. Yes, sir.

Mr. WEEMS. If he is right about that, he is right, undoubtedly.

Mr. MILLER. There is a provision that in order to make a new rule, after objection is made to the old one, the matter must go over.

Mr. DUDLEY. Not at all. The rules provide that they may be amended at any meeting of the State central committee. See rule 36.

Mr. SULLIVAN. Further, there is no allegation anywhere that they attempted to make a new rule. The only statement is that they construed an existing rule.

Mr. DUDLEY. Then I say this, that the very authority which construed these rules of the party, and promulgated them, met on the 28th day of October and decided that as a matter of right persons affected by the action of the district committee had a right of appeal, that an appeal did lie; and this action was taken at Chairman Cooper's request, at a meeting at which he was present, and called on his motion. They so decided, and that became the law of the Republican party of Kentucky, and is the law of the party to-day because of that action and that fact. That was enacted by the State central committee October 28, 1903.

Mr. SULLIVAN. An ex post facto law in this case.

Mr. DUDLEY. No, sir; not on this case; because the action of the district committee appealed from was not taken until November 2.

Mr. SULLIVAN. Then I am mistaken.

Mr. DUDLEY. This committee meeting was called on the 1st day of November, Sunday, to meet November 2, Monday. It met on the 2d day of November, Monday. This authority of appeal, or the right of appeal, had been asserted by the State central committee on the 28th of October, and therefore it existed at the time that the appeal was made. The appeal was made, and with the result that you are acquainted with.

Mr. BYRD. An application was made to the State central committee, and they stated that the district committee would have to settle it, with the right of appeal to them?

Mr. DUDLEY. Yes, sir.

Mr. BYRD. And the parties acted in accordance with that?

Mr. DUDLEY. Yes, sir; and that action was taken at the instance of Mr. Edwards or, rather, by Mr. Cooper at Edwards's instance.

Mr. CURRIER. What action?

Mr. DUDLEY. That action of the State central committee.

Mr. CURRIER. Oh, no.

Mr. DUDLEY. If you say no, Mr. Currier, I would not contradict

you for the world. He brought that question up before the committee.

Mr. EDWARDS. You are mistaken.

Mr. DUDLEY. Well, I will withdraw Mr. Edwards's name from it, and substitute Mr. Cooper, acting in Edwards's interest.

Mr. CURRIER. Was not this the question that Mr. Cooper brought to the attention of the committee, whether Mr. Cooper was alone the governing authority, or whether Mr. Cooper and the chairmen of the county committees constituted the governing authority?

Mr. DUDLEY. Yes, sir.

Mr. CURRIER. And not whether there is an appeal or not?

Mr. DUDLEY. Yes, sir; and they decided that that committee was the arbiter of the matter, subject to an appeal. That is the way it was. They so stated, and that is probably the correct proposition, that the district committee was the governing authority for that district in regard to the nomination; but if anyone was wronged, or had ground for an appeal, he might appeal to the State central committee to have that wrong righted. That is what they say, and we have tracked that and followed it exactly.

Now I come to my conclusion. Having done this, and the State central committee being the highest governing authority of the party in the State of Kentucky, acting upon appeal, that was the very last utterance by an authorized body upon the question as to who was entitled to have his name put upon a ballot, under the log cabin, and so the State central committee said and telegraphed it to all the county clerks, and that was the last official information on the subject they had, namely—that Doctor Hunter's name should go on the ticket.

Now, I say, if in the five counties where his name was put upon the ticket Hunter's name did appear there and did appear there under the color of this right, there is no doubt about his lawful election.

The CHAIRMAN. Have you a copy of the rules there?

Mr. DUDLEY. Yes, sir. They are in the record.

My point is this, that the highest authority of the Republican party of the State made the last authoritative utterance after full hearing from both sides on all the merits of the controversy, and then brought it immediately to the attention of every county clerk in the district; and therefore the five clerks who put the name of Doctor Hunter on their certificates did it believing that they were acting under the proper authority of the State. May testifies so at page 256 of this record. If you will take pains to read May's testimony you will see that he says, that after the injunction, and all these varying notices from both sides, he made up his mind that Doctor Hunter was recognized as the legal candidate of the Republican party by its highest governing authority, and his name should go on that ticket; that he ought to put it there. He was threatened with imprisonment, and was arrested, and every possible stress was brought to bear upon him to make him change his mind, but he maintained his position steadfastly, and suffered arrest, and carried out what he believed was his duty. Are you going to say that that man's action was governed by fraud? Read his testimony, and I will undertake to say that you will agree with me in saying that man fearlessly did his duty as he understood it; that what he did he believed to be his legal duty, and that his action was sanctioned by law.

Therefore, in these five counties, Doctor Hunter's name being on with the color of right, you may say that a mistake was made—you may find that—but you can not say that it was done fraudulently, from the testimony. It was done with a color of right, and it produced enough votes to elect Doctor Hunter to Congress, taken together with those votes on the tickets given him where Edwards's name was under the log cabin, which votes can not be questioned; and taking those votes he had a clear plurality of the votes in that district. And I say that if you follow the cases of Fairchild *v.* Ward, Hopkins *v.* Kendal, and White *v.* Boreing, you can not come to any other conclusion but that Doctor Hunter is the sitting member and is entitled to retain his seat.

Just one other suggestion I make to the committee for their consideration. That is, that if it should be considered as a proper thing and a right thing to have adjourned that convention from Middlesboro to London, yet if you will scan the evidence you will find that of the uncontested delegates, or of those seated by the majority report, who were given the proper right to vote, Hunter still had a majority of all the 346.

Mr. MILLER. You mean seated by which convention?

Mr. DUDLEY. I mean to say Edwards was not properly nominated by that convention. They did not have a legal majority of the voters there. There were 277 votes in each of the conventions. There were 69 who were not represented at all in each of the conventions. Now, you can figure that out.

Mr. SULLIVAN. Two hundred and seventy-seven in each?

Mr. DUDLEY. Yes, sir. There were really present at the London convention only 261 delegates, and how they report 277 votes can only be explained by the fact that one man cast another's vote. They seated all these Edwards delegations, regardless of right or merit.

Mr. CURRIER. And you had the contesting delegations all in the Middlesboro convention?

Mr. DUDLEY. No, sir; we did not.

Mr. MILLER. You directed your argument to me upon the question of appeal. My position is this, that while it is true that the State central committee is the legislative body of the Republican party in the various States, yet it has certain specific powers, and unless it has got other power than that, it can not exercise it arbitrarily. For instance, the rules of the organization in the State of Kentucky, and all other States that have an organization, define what the power of that State central committee is. Now, if there is anything in the rules that provides for an appeal, I hold, of course, that an appeal will lie in the Congressional committee; but in the absence of anything in the rules providing for an appeal from the Congressional committee to the State central committee, no appeal will lie, and the State central committee, in my judgment, had no power to arbitrarily say that hereafter an appeal will lie from the Congressional committee to the State central committee unless they adopt that rule, resolution, or amendment, or whatever they call it, in the way that the rules prescribe.

Mr. DUDLEY. I so understand your position.

Mr. MILLER. And the rules here prescribed, in case of an amendment to the constitution, or a new rule, that that action must lie over for one week, if there is objection; and there was objection here.

Hence, I say that the State central committee can not in this way take any action whatever, and it is not binding on the State Congressional committee, and I judge that you do not know of a case where the appeal lies from the Congressional committee to the State central committee in that way.

Mr. DUDLEY. I can not agree with you as to this point, and I cite rule 36 of the Republican State central committee rules. When I was on the executive committee of the national committee, the case of the nomination of Mason and Davis was brought before the national convention on appeal from the action of the Congressional convention, and was passed upon by the national convention, and the verdict of the national committee—of the executive committee—was executed by them in good faith and was carried out. We turned down Davis and certified the nomination of Mason.

Mr. MILLER. Was it an appeal in that case, or did it go there on an agreed statement of facts?

Mr. DUDLEY. It came to us as the governing authority.

Mr. MILLER. I know it did, but it came there on an agreed statement of fact between Mason and Davis.

Mr. DUDLEY. Yes, sir.

The CHAIRMAN. Before you sit down I want to call your attention to the statute which, of course, rises above the party rules if there is any conflict. [Reading:]

In the event that two or more persons who have filed certificates of nomination with the secretary of state and county clerk shall claim to be the nominee of the same political party, the governing authority of said political party shall designate, in writing, to said secretary of state and county clerk which of said candidates shall be entitled to the party emblem.

Now, it does not say "governing authority of the party in that State." Perhaps the inference is that it means in that district or territory for which the nomination is to be made. On that point I read further from the statute:

Provided, however, If there be two or more contending executive committees of the same party in a county or district—

Mr. DUDLEY. Yes, sir.

The CHAIRMAN. Which seems to imply that it is the governing authority in that county or district which is meant?

Mr. DUDLEY. Yes, sir.

The CHAIRMAN (reading):

Provided, however, If there be two or more contending executive committees of the same party in a county or district, then that county or district committee which is recognized by the State governing authority of such party, by the written authority of the chairman thereof, shall be recognized by the county clerk and secretary of state.

Now, is not that conclusive that the legislature intended that the governing authority of the party in the district should settle the matter?

Mr. DUDLEY. But does it say that its action shall be final? It does not say so.

The CHAIRMAN. It says, "the governing authority of said political party shall designate in writing," etc.

Mr. DUDLEY. The State central committee have the final decision

between the two executive committees, do they not? I should assume so. It says:

If there be two or more contending executive committees of the same party in a county or district, then that county or district committee which is recognized by the State governing authority of the party, by the written authority of the chairman thereof, shall be recognized by the county clerk and secretary of state.

The CHAIRMAN. That is to say, the State governing authority determines which one of these district contending factions is the governing one.

Mr. DUDLEY. Is not that a clear recognition of the right of appeal?

The CHAIRMAN. It is to determine which is the governing authority in that district.

Mr. DUDLEY. Let me read you the statute of 1899, which is repealed by this, I imagine. This refers to primary election legislation also, you observe. I read from the Kentucky statutes of 1899, section 1453:

In case of a division in any party, and claim by two or more factions to the same party name, or title, or figure, or device, the clerk of the county court shall give the preference of name to the convention held at the time and place designated in the call of the regularly constituted party authorities.

That was section 1453 of the act of 1899 of Kentucky. But this is a later act; this is from the codification of the laws, and this is put in its place. One makes the county clerk the arbiter of the matter, or rather he is compelled to act, and the other calls upon the governing authorities of the party, and in case they split the State central committee shall decide which is the governing authority.

Mr. WEEMS. Are those words "time and place" in the present statute?

Mr. DUDLEY. No, sir.

Mr. WEEMS. One question I would like to ask you. You have not said anything about it. Of course you are familiar with the testimony of these 80 or 90 men who are depended upon to establish this case. Do you admit that that is sufficient to authorize this committee to reject the ballots for Hunter?

Mr. DUDLEY. No, sir; I no not.

Mr. WEEMS. You have not referred to it.

Mr. DUDLEY. No, sir; it was fully referred to by my predecessor. I think that the line of decisions by Congress has shown a reluctance to disturb a majority of that kind.

Mr. BYRD. Was the fact of the contest between these two men pretty thoroughly known throughout the district on the day of the election?

Mr. DUDLEY. It was.

Mr. BYRD. I assume that you speak advisedly about it. Did they know that they were contending about it?

Mr. DUDLEY. I think all the testimony given will convince you of that fact.

Mr. BYRD. That it was known throughout the district?

Mr. DUDLEY. Yes, sir. And a great deal of interest was shown.

Mr. CURRIER. Is there any evidence in that record to show that any man was deceived or any man voted without knowledge?

Mr. DUDLEY. No, sir; I do not think there is a single scintilla of evidence to that effect.

Mr. LANDIS. Did this whole fight get down in the precincts, and was

it notorious; did it go down among the people of the precincts, and was it a matter of common knowledge?

Mr. DUDLEY. Of course I speak from the record. It was.

Mr. CURRIER. I find nothing to show that anybody voted without knowledge.

Mr. DUDLEY. Let me call your attention to one circumstance that shows that the people were fully advised. Take the alignment that was put up in Somerset County. In other counties something similar was done, but in that case it was well marked. In this case it was a mass meeting.

Mr. CURRIER. I was speaking about the knowledge after the convention.

Mr. BYRD. The question is as to whether the people having the log cabin, the party emblem, placed over the wrong man's name, voted for him by virtue of that fact.

Mr. DUDLEY. No, sir; I think it is not so.

Mr. BYRD. And that the people were not aware of any contest of any kind between these parties, and wanted to vote for the party, and voted more for the party than for the man?

Mr. DUDLEY. That may be so in some cases, but in some counties the designation was ignored.

Mr. BYRD. You understand, then, that the people generally understood that each claimed the nomination, and they went and voted with their eyes open?

Mr. DUDLEY. Yes, sir; I think Mr. White's vote is indicative of that very thing.

Mr. CURRIER. Mr. White's name was on the ticket everywhere. There was no effort at all to vote for Mr. White, because his name was everywhere on the ticket.

Mr. RAMSEY. Here is a recapitulation of the vote, and it shows that Mr. White carried seven of these counties, and Doctor Hunter carried seven of these counties, and Mr. Edwards carried five. Now, in the county of Leslie there was something to the effect that it was said that if a man should cast a vote for Edwards in Leslie county he would be in contempt of court, and so on. I refer to the deposition of the commonwealth's attorney. I just want to call attention to the fact that Mr. White carried Leslie county. Doctor Hunter got only 25 votes in Leslie county, and Mr. White carried Adair county. Mr. Edwards got, in Leslie county, 116 votes, Dr. Hunter got 25 votes, and Mr. White carried the county, showing that the people were voting for the man they wanted to vote for.

Mr. DUDLEY. That is shown from all the evidence. It is shown that although Edwards's name was on the ticket under the log cabin in 14 counties, he carried but 5, and while Hunter's name was on the ballot under the log cabin in but 5 counties, he actually carried 7 counties. There is one other point I want to call to the attention of the committee. I want to call your attention to something that I feel I ought to speak of, because it is evidently put in here to influence the minds of the committee against Doctor Hunter. That is what is written by the contestant in his brief, on pages 4 and 5. It is an attack upon the character of Doctor Hunter.

I want to say this, that this should not have been put in the brief, unless there had been some testimony in the record which would justify

it. But there has not been adduced one single scintilla of evidence. It seems to me that in view of what has recently happened in this country, where a great Presidential candidate has assumed to attack the character of his opponent without any proof whatever, Edwards should have been slow to attack the character of Doctor Hunter in that way, and fail to make good such an attack with proof.

The CHAIRMAN. Some members of the committee may not coincide with you in that view.

Mr. DUDLEY. I speak my mind freely.

Mr. LANDIS. Would it have made any difference if he had been guilty of every crime in the calendar?

Mr. DUDLEY. Not at all; I wish to be brief. I wish to ask you to ignore that part of it. It does not cut any figure in this case, and has not a place in this case. It is a foul attack upon the character of a man, without any evidence to sustain it.

Mr. MILLER. There has been a good bit said here to the effect that these people knew what they were doing on election day, and knew what they were voting for?

Mr. DUDLEY. As much so as voters ever do.

Mr. MILLER. Yes, sir. Now, how could the rank and file of that Congressional district know whether Doctor Hunter or Mr. Edwards was the nominee of the Republican party except as they might find his name on the ballot, under the party designation?

Mr. DUDLEY. In the first place, let me answer that by saying that when the delegates returned they told the people what they had done; and if they were ordinarily intelligent, and I believe in that district they claim to be so, the press teemed with it, and it was a matter of common talk and common knowledge, and they could not help knowing it.

Mr. MILLER. But the secretary of state first certifies down to the clerks that Doctor Hunter has been nominated?

Mr. DUDLEY. Yes.

Mr. MILLER. And then he certifies down a few days later that Doctor Hunter has not been nominated.

Mr. DUDLEY. After the time expired with which he could lawfully certify whose name should be placed upon the ticket.

Mr. MILLER. And then that Edwards was upon the ballot.

Mr. DUDLEY. Yes, sir.

Mr. MILLER. And then we have the contention in the Congressional committee that Edwards should have been on the ballot?

Mr. DUDLEY. Yes, sir.

Mr. MILLER. And then we have a contention in the State central committee that Hunter should have gone on the ballot?

Mr. DUDLEY. Yes; that was the last authoritative action by the highest governing authority of the Republican party.

Mr. MILLER. Now, how did the rank and file of the party know anything about it when it only occurred five or six days before the election, when these people were 25 or 30 miles away from a railroad and had no telegraph or telephones?

Mr. DUDLEY. If you will read the testimony of May—

Mr. MILLER. I did read it.

Mr. DUDLEY (continuing). The manly testimony he gave you will see. I think it is a good answer to the question that you put. I think the various actions tended to confuse the minds of many, and did con-

fuse them in 14 counties, and I think they put Edwards's name erroneously on that ticket, though not fraudulently. Mr. Edwards was, I think, doing what he assumed to be right, and I am not here to say one word against Mr. Edwards, nor have we done so in our argument nor shall we in our brief. Mr. Edwards was pursuing what he thought was the right course, and so was Doctor Hunter. There is always a chance for honest difference of opinion, and the record shows that there was no fraud whatever.

That there was any fraud upon the voters of that district we deny, and the whole case that we claim is this—it must resolve itself into this, that unless you find that Doctor Hunter's name was put on the ticket in five counties by a foul wrong or fraud, you ought not to disturb the votes under it.

Mr. SULLIVAN. The only trouble is with the Democrats coming to the conclusion that the names were legally on the ballot.

Mr. DUDLEY. If you go that far I would have to credit Kentucky Republicans not only with intelligence, but with omniscience. I have lived close to them for many years, and I want to say to you that they are all honorable men.

The CHAIRMAN. What is the meaning of these initials in the recapitulation, "R. D.?"

Mr. WHITE. If the committee will allow Captain Calhoun a moment to explain these figures I would like to have him do so, so that you may understand that.

Mr. CALHOUN. Mr. Chairman, this recapitulation shows the votes which were cast in the respective counties for the respective candidates, beginning with Doctor Hunter under "R. D.," standing for "Republican device." You will observe in the left-hand column, the last column, and under Mr. Edwards's name you will observe in the second column, the respective votes that were cast in the counties under the Republican device in those counties.

In the third column, under Mr. Edwards's name, you will observe "R. D. with D. D." That is in those counties where the vote was cast for him under the Republican device, and under the same ballot there was a Democratic device.

The CHAIRMAN. Was he in both?

Mr. CALHOUN. No, sir; this is just for the convenience of the committee, put in here in our brief.

(Thereupon, at 11.20 o'clock p. m., the committee adjourned until to-morrow, Wednesday, January 11, 1905, at 10 o'clock a. m.)

WEDNESDAY, *January 11, 1905.*

The meeting was called to order by the Hon. James M. Miller at 10.20 o'clock a. m.

ARGUMENT OF J. W. ALCORN, ESQ., ATTORNEY FOR HON. D. C. EDWARDS.

Mr. ALCORN. Mr. Chairman, and gentlemen of the committee, the patient hearing that you have given the parties in this case, as well as the many pertinent questions propounded, have been very gratifying.

to me, because it shows that the committee is determined, or has reached a determination, to investigate this case to the bottom, and decide according to whatever the record shows to be the right principle; and in addition to that, the most gratifying part is that it relieves me of much of what I was fearful would be a burden thrown upon me to explain of this case to the committee. I take it for granted that the committee would not take up the consideration of the record until after the argument was heard.

Now, we find here a most remarkable situation in regard to this case. In the first place, we find that in the special election held in the Eleventh Congressional district of Kentucky in 1903 there were the names of two different persons printed upon the official ballot as the nominees of the Republican party. They did not appear upon the same official ballot in the same counties, but in fourteen of the counties one gentleman appeared as the nominee, and in five counties another gentleman appeared as the nominee. That very naturally brings up the inquiry as to whether or not it is possible, under the laws of Kentucky, to have two persons presented to the voters as the nominees of the same party for the same office at the same election. Then, in this connection, before I begin to refer to the statute on that subject, another remarkable feature is exhibited, that in the Eleventh Congressional district at the special election held on the 10th day of November, where the Republican vote is ordinarily 30,000 to 35,000, there were only about 12,000 Republican votes cast. This, of course, brings up a further matter of inquiry, to which I will advert after a while; but the first question to which I wish to direct your attention is that under the laws of Kentucky it is not allowable to have the name of more than one man upon the official ballot as the nominee of the party for the same office.

The constitution of Kentucky, which was adopted in 1891, provides in very terse and plain language that all elections in the State shall be held by secret official ballot provided at public expense to the voters at the polls, and makes it mandatory upon the legislature to enact laws for the purpose of carrying out that constitutional requirement. In obedience to that mandatory requirement of the constitution the legislature has enacted a code of laws on the subject of elections. The secretary of state, aided by the attorney-general of the State, has compiled those election laws and issued them in pamphlet form for the information of the election officers. And inasmuch as our volume of Kentucky statutes is a large book, I will use this compilation in preference to stepping out and getting the Kentucky statutes, because I have tested it enough to know that it is correct, even if it did not have the certification of the secretary of state and the attorney-general as to its authenticity.

The laws enacted by the legislature as to the preparation of these ballots recognized party division. They provide that any party voting more than 2 per cent of the votes cast at the last general election may, by either primary election or by convention, nominate a candidate for any office to be filled by the voters; and that upon the proper certification by the officials of that party to the proper official of the State or county, then that man's name, and no other, shall be printed upon the official ballot as the nominee of that particular party. In order to distinguish the party affiliations of the man, not only is the name of the party of which he is the nominee inserted at the head of the ballot,

but the party, in its convention, is required to adopt an emblem or device to distinguish the ballots of that party from the ballots of the other parties or from the ballots of independent candidates. The Republican party in Kentucky votes, or has for years voted, more than 2 per cent of the votes cast at any general election, and is, therefore, entitled to nominate by a primary election or by convention.

On the 16th day of September, 1903, the Hon. Vincent Boreing, who had been elected in 1902 as the Representative from that district to the Fifty-eighth Congress, died. He was a popular man, an efficient Representative, and a man who was highly esteemed by all who knew him; a man governed by proper motives in the estimate of men. Notwithstanding the provisions of the Revised Statutes of the United States, relegating to the State the manner of holding the elections to fill vacancies in the Congress of the United States caused by death or resignation, the legislature of Kentucky seems to have omitted to make any special provision for such election. Upon the death of Judge Boreing there was considerable dispute among the members of the legal profession as well as among politicians as to the manner in which his successor was to be elected. The governor, on the 28th day of September, issued a proclamation for an election, directing the sheriffs of the various counties to hold elections in their respective counties on the 10th day of November, 1903, for the purpose of electing a person to fill the vacancy caused by the death of Judge Boreing. At that time a canvass was pending in the State for the election of a governor and other State officers, as well as members of the legislature. Much interest was aroused all over the State in that election, and, of course, the attention of the people was turned more to that for the time being than to the election of the member of Congress, until the nominations should have been made. I simply refer to that fact so that you gentlemen, if you read the record, may read it in the light of the fact that this election was called to be held seven days after the general election, and that the call was issued in the midst of an exciting campaign for the election of State officers.

Now, an examination of the statutes of the State of Kentucky will show that it was not, and is not, allowed by the legislature to have the name of more than one candidate for the same office as the nominee of the same party on any official ballot at any election held in that State. Notwithstanding that fact, we find in five of the counties composing the Eleventh Congressional district Doctor Hunter's name was printed on a ballot, and in fourteen the name of Mr. Edwards was printed. How did that happen? Certainly some man has violated the law, as I will proceed to show. Section 11 of the Kentucky election laws provides that—

Certificates and petitions of nomination of candidates for offices to be voted for by the electors of the State, other than members of the general assembly, or of any division or district of the State exclusively, shall be filed with the secretary of state.

There is a preceding provision there that certificates of the nomination of officers for counties shall be filed with the county court clerk. Now, this was an election for a Member of Congress to represent a district of the State exclusively. The statute provides in that case that the certificate shall be filed with the secretary of state. That certificate is signed in the case of a primary election by the chairman and secretary of the executive committee of the party in that district. In

the case of a convention, that certificate is to be signed and delivered to the secretary of state by the chairman and the secretary of the convention which nominated the candidate.

Now, that far it must be clear that it was never intended that the secretary of state should have anything more than a ministerial authority. He has no judicial power; but, as if to emphasize that point, the next succeeding sentence is in these words:

In the event two or more persons who have filed certificates of nominations with the said secretary of state or county clerk shall claim to be the nominee of the same political party, the governing authority of said political party shall designate, in writing, to said secretary of state and county court clerk which of said candidates shall be entitled to the party emblem.

So, you can see that the secretary of state had no authority to decide as between two men who file certificates in his office as to which of them is the party nominee. That is a question to be decided by some person connected with the party organization to which these contending parties belong. Now, what authority passes upon that question? The statute is not uncertain about that.

The governing authority of said political party shall designate, in writing, to said secretary of state and county court clerk which of said candidates shall be entitled to the party emblem.

When that is done, then the duty of the secretary of state arises. He simply proceeded to perform his ministerial act in connection with these certificates. The contest is not decided by him, but it is decided by the governing authority of the party to which these persons belong.

Then the duties that are next required of him are to be found in the succeeding section, where it provides as follows:

Not less than twenty days before the election of such officers as are required to file their certificate of nomination with the secretary of state, said secretary of state shall certify to the respective county court clerks of the various counties which are entitled under the law to participate in the election of the respective candidates the name and place of residence of each candidate for each respective office as specified in the certificate and petitions of nomination filed with him, and shall designate therein, subject to the provisions of this act, the device under which the group or list of candidates or candidate of each party shall be printed, in the order in which they shall be arranged on the ballot.

Now, that is the extent of the authority of the secretary of state.

Now, in this case we find that on the 19th day of October, 1903, there were filed in the office of the secretary of state the certificates of two men claiming to be the nominees of the Republican party as its candidate to be voted for in the Eleventh Congressional district, to fill the vacancy caused by the death of the Hon. Vincent Boreing, elected to the Fifty-eighth Congress of the United States. The secretary of state had no right to do anything more than simply file each one of those certificates until the governing authority of the party had told him which one of these gentlemen's names was entitled to be printed in the official ballot under the party emblem. Any act of his further than that, before action by the Republican governing authority, was utterly nugatory, wholly without authority. But as I shall presently show he did attempt to act in the teeth of the statutes.

Mr. CURRIER. When the secretary of state issued his first certificate, he certified Doctor Hunter's name. Had any other name properly been filed with him at that time?

Mr. ALCORN. Yes, sir. Now that brings me right up to the next proposition. He seems to have been hasty in his action.

Mr. RAMSEY. If I may be permitted to interrupt the gentleman, I would like to ask: Is it not true that the secretary of state had issued the certificates and had mailed a number of them before Mr. Edwards had filed his certificate?

Mr. ALCORN. I beg pardon; no. He had mailed them before Mr. Cooper's certificate was filed.

Mr. TALBOTT. Was it then known in the State that these two conventions had been held?

Mr. ALCORN. Yes, sir. I suppose it was as well known as such incidents are where the newspaper gentlemen are always anxious to get information for the papers.

Mr. SULLIVAN. It has been said that the secretary of state had to make your certificate in order to get it in before the twenty days. I want to know if you had any idea as to whether there was any duty resting upon the secretary of state to get it in in time?

Mr. ALCORN. Yes, sir; I will discuss that a little out of the regular order.

Mr. SULLIVAN. In legal time.

Mr. ALCORN. That is the time prescribed by the statute; but as the reference to the matter by Justice Settle, agreed to by Justice Barker, says that it is sufficient if he sends out the certificate in time for the clerk to get the ballots printed and distributed to the precincts, therefore this is simply directory. That is the opinion as expressed by Judge Settle, and that is the nearest adjudication that we have had upon the subject. It is between these parties *res adjudicata*.

Mr. RAMSEY. If I may be permitted to interrupt you, did not Judge Settle say, on page 225 of the record:

In the absence of such designation by the governing authority of a party, either the secretary of state must make the decision of the merits of the claimants or the party must be deprived of the right to elect a Congressman?

Mr. ALCORN. That is the expression of his opinion, *arguendo*; but he did not decide it.

Mr. WEEMS. Deprive the people of election by failing to do this thing in time?

Mr. ALCORN. No, sir. Now, I just wish to read in that connection this statement in the opinion of Judge Settle, as found on page 426 of the record:

In a case like this, though the secretary of state may have acted beyond his authority in deciding in favor of one of the two rival claimants for the nomination, I know of no rule or reason that would forbid the governing authority of a party in the district from deciding the contest between them at any time after action by the secretary of state, provided it be done in time to prepare the ballots with the name of the designated nominee on them for use at the election.

We have had several constructions of the other provisions of this statute, but none as to this particular provision. For that reason we have had to look to the context and place our own construction upon what is meant by it. Who is the governing authority? Who is to designate to the secretary of state which one of these contending parties is entitled to have his name printed under the party emblem? As to that, it seems to me that the statute is so plain as to need no argument to demonstrate the correctness of the contest which we make, and that is that the governing authority there referred to is the district committee of the party in that particular district, and no one else.

Mr. CURRIER. I hesitate to interrupt, but until the change in the rules, or the construction of the rules, occurring very late in this canvass by the State committee, was it not understood that the governing authority was in the chairman alone?

Mr. ALCORN. Yes, sir.

Mr. CURRIER. And not in the committee?

Mr. ALCORN. Yes, sir; I see that you are following my argument, which is very natural, and I feel complimented by your suggestion, as I see you are keeping track of what I say.

Mr. RAMSEY. I do not want to interrupt you, if you have that conclusion; but they have asked you for that, and will you please set forth any authority for holding that the chairman of the district committee has a right to decide it?

Mr. ALCORN. Just in a moment.

If there be two or more contending executive committees of the same party in the county or district, then the county or district committee which is recognized by the governing authority of such party by the written certificates of the chairman shall be recognized by the county court clerk and the secretary of state.

It occurs to me that that makes it so clear that it does not require any further argument in support of our contention. The executive county committee of the district is that governing authority which is to designate to the secretary of state which of these contending parties is entitled to have his name printed under the party emblem.

Now both certificates were filed on the 19th day of October, creating that condition where the secretary of state could not get one step further until the governing authority of the party had designated which one of these two men was entitled to the nomination.

Mr. SULLIVAN. You claim he had no right whatever to act until that had been done?

Mr. ALCORN. He had no right to decide it.

Mr. SULLIVAN. Not only he had no duty to the party, but that he absolutely had no right or power to do so?

Mr. ALCORN. Any act of his to the contrary would be an excess of authority, usurpation.

Now, on the 20th day of October, and within the time prescribed—the twenty days for which they seem to contend here—the chairman of the district committee of the Eleventh Congressional district of Kentucky, who is also a member of the executive committee of the State committee of the Republican party, filed in the office of the secretary of state his certificate designating to the secretary of state that D. C. Edwards was the person entitled to that device.

Mr. MILLER. What was the date of that?

Mr. ALCORN. The 20th day of October.

Mr. MILLER. These certificates were both filed on the 19th?

Mr. ALCORN. Yes. The chairman did not get to Frankfort until the 20th. As soon as he heard of this action he rushed right in to attend to his party duty and have it settled.

Mr. CURRIER. He was recognized on the 20th by the secretary of state as the governing authority.

Mr. ALCORN. Oh, no; but when the secretary of state declined to recognize him, then the chairman of the State executive committee of the Republican party filed on the same day with the secretary of state the certificate that Judge Cooper was the executive committee and

governing authority of the Republican party in the Eleventh Congressional district of Kentucky.

Now, when Mr. Cooper's certificate was filed, the secretary of state had already on that day made out certificates to the various county court clerks in the Eleventh Congressional district designating W. Godfrey Hunter as the man whose name was to be printed under the emblem of the Republican party as its candidate for Congress at that special election.

Mr. MILLER. Now, is there anything in the record at all to show at what hour this certificate of Mr. Cooper's was filed, and the further certificate of the chairman of the State central committee, and also the hour of the action of the secretary of state in sending down to the various county clerks that ballot?

Mr. ALCORN. There is nothing to fix the exact hour.

Mr. MILLER. Was it all done on the same day?

Mr. ALCORN. Yes, sir; and apparently before noon of that day.

Mr. MILLER. But there is nothing to show it here.

Mr. ALCORN. Except that it was before noon.

Mr. TALBOTT. It was done the same day. It was the certificate of the chairman of the State central committee that Judge Cooper was the governing authority of the Eleventh Congressional district?

Mr. ALCORN. Yes.

Mr. TALBOTT. It was all there the day he sent out the ballots?

Mr. ALCORN. Yes, sir. At the time it was done, as I say, the secretary of state had sent to the post-office his certificate to all of the county court clerks designating Hunter as the person entitled to the party emblem; but after Judge Cooper had filed his certificate, and after the chairman of the State executive committee of the party had filed his certificate that Cooper was the governing authority of the party in that district, the secretary of state seems to have halted, and he sent to the post-office and found that seven of the certificates had already been sent out in the mail, and that twelve were still in the office, so he had them brought back to his office, withdrew them for the time being. But after considerable wrangling he again issued them, that day or the next, and sent them out, going upon the theory, as we assume and I believe he so states in a deposition, that Cooper was not the governing authority, notwithstanding the fact that Judge Cooper had fortified himself with the certificate of the chairman of the State central committee that he, Cooper, was the governing authority of the party in the Eleventh Congressional district. The secretary of state seemed to have an idea that there would be no such thing as one being the executive committee.

Now, counsel for the contestee asked me to refer to some authority on that subject. I can only cite instances recited by Chairman Barnett of the Republican State committee. That of course in the nature of evidence would be the only authority which we can cite. Chairman Barnett in addition to giving the certificate to the effect that Cooper was the governing authority of the party in that district in his deposition goes on to give his reasons for it, and tells us that such had been the practice in that district, not only as to Cooper, but as to previous chairmen of the committee of that district, and possibly as to others. At that stage, it then being only a few days until this special election was called and it being highly important that as much con-

tention as possible should be prevented from being brought before the people of that district, the contestant, Edwards, took the only honorable course which was left to him. The secretary of state had ignored, as he thought, the plain provisions of the law. He therefore filed in the office of the Laurel circuit court an application for a restraining order and mandatory injunction restraining these various county court clerks from having the name of Hunter printed under the emblem of the party as the nominee of the Republican party at the special election.

In this connection I suppose it is proper I should explain to you gentlemen the practice in the State of Kentucky on this restraining order and injunction procedure. If it is shown to the judge to whom application is made that great and irreparable injury is likely to result to the applicant by the delay resulting from notice to the defendant of the application, the judge himself will give a temporary restraining order restraining the defendant from the commission of the alleged wrong complained of in the petition until a day named by the judge, when the party shall appear before him and be heard. That was done in this instance. This petition of Mr. Edwards was filed on the 22d day of October, just as soon as he could have filed it after the secretary of state had shown his defiance of the rights of Mr. Edwards and of the rights of the voters in the Republican party, as we contend. The judge accorded that restraining order and fixed the 29th day of October, at Manchester, as the time and place for hearing the application of the plaintiff for an injunction—a mandatory injunction—restraining the clerks from printing Hunter's name on the ballot and requiring that they print Edwards's name on the ballot. After Mr. Edwards had filed his petition (I don't know whether it is shown in the record or not, but you can find some glimpses of it; but the record is printed in such a way that I can not find a number of things that I think are there) Mr. Hunter, going on the idea that this action of the circuit judge was an injunction instead of a restraining order, gave notice and appeared before Judge Settle, of the court of appeals, and entered a motion asking that he set aside the restraining order which had been granted by Judge Faulkner.

Now, under the Kentucky practice, the circuit judge grants an injunction, and if he has granted an injunction, the party against whom it is granted can give notice to the adversary and make a motion before one of the courts of appeals to set aside that injunction, but that is not applicable in the case of the restraining order. The parties appeared before Judge Settle at Frankfort. The motion was argued and Judge Settle dismissed the motion on the ground that he had no jurisdiction to set aside a mere restraining order. In the course of his argument it was developed that for Mr. Hunter it would be and was seriously contended, and he insisted, that Cooper was not the governing authority of the party in the district, notwithstanding the fact that he had been so designated by the chairman of the State committee. And inasmuch as some question was raised, Judge Cooper, like the honorable, true man that he is, like the born gentleman that we who know him best know him to be, immediately requested Mr. Barnett, the chairman of the committee, to call the committee together to decide that question, and at his request they did meet on the 29th day of October, 1903, for the purpose of deciding that question. Some of the members were there in person, several were represented by proxies, and, most singular to

relate, one of those proxies was voted and held by the gentleman who had been the chief counsel for Doctor Hunter in the proceeding before Judge Settle, and that same gentleman after that continued to be the chief counsel of Doctor Hunter and is yet the chief counsel for Doctor Hunter.

Mr. CURRIER. If you eliminated that evidence, would the result be changed?

Mr. ALCORN. But we can not measure the extent of the poison injected; and we only know from that instance that there was at least one. I simply refer to that for the purpose of showing the tortuous methods to which these gentlemen were willing to resort. They met and they decided that Cooper was not the governing authority, but that the district committee was. Then Cooper promptly, and in the interest of the party, and not in the interest of any special person, called a meeting of that committee, to be held at London on the 2d day of November, 1903, just as soon as it was possible for him to call it after this decision by the State committee, and after the information had been imparted to him.

The district committee met at London on the 2d day of November. It is true that it was on the night before the general November election of 1903. It is therefore not strange, then, that some members of the committee failed to attend in person and therefore sent their proxies, as they wanted to be present at the polls in their respective counties. But that was the last day Mr. Cooper thought that it was expedient and proper, in the interest of the party, to call them together, and he did not want to have such a late decision on this question, as then it would be impossible to have the ballots printed in time. He called them together and they decided that Mr. Edwards was the nominee, and directed the chairman to designate to the secretary of state that he was the person entitled to have his name printed under the party device on the official ballot. That was done. On the next morning the secretary of state had filed with him at his residence in Manchester this action of the district committee. He did not go down to his office at Frankfort, the State capital, but he went to Louisville, and after deliberation until the next morning he found that he had acted erroneously and therefore issued a certificate.

Mr. RAMSEY. Will you permit me to ask you a question?

Mr. ALCORN. Yes.

Mr. RAMSEY. Is it not a fact, as shown by this record, that at both meetings of the State central committee, the meeting of October 28 and also the meeting of November 5, that H. W. Batson held the proxy of a man that he did not know and never saw in his life and that he acted as attorney for Mr. Edwards?

Mr. ALCORN. He did not then; he did after, but not that day nor before.

He then directed to have the name of Edwards printed under the official emblem of the Republican party in the official ballot as the candidate to be voted for at that election. You will find that in two or three places when following the depositions of John S. May.

That ought to have ended the matter, not only for that reason, but for another reason. After Judge Settle, of the court of appeals, had dismissed the motion to set aside the restraining order we appeared before Judge Faulkner on the 28th or the 29th day of October and applied to him for an injunction. Upon hearing a full argument the

judge granted the injunction enjoining the county court clerks in each county of the district from printing the name of Hunter under the party emblem in the official ballots, and required by mandatory injunction the printing of the name of Edwards there.

Mr. WEEMS. That was between the two actions of the secretary of state?

Mr. ALCORN. Yes.

Mr. TALBOTT. Prior to the revoking of the first order?

Mr. ALCORN. Yes.

Mr. MILLER. Did the various county clerks have notice of this injunction served upon them?

Mr. ALCORN. Yes, each one of them.

After this injunction had been granted by Judge Faulkner, Mr. Hunter gave notice of a motion before this same Judge Settle which he expected to make at Bowling Green, the residence of Judge Settle, on the day of the election. We were then 25 miles from a railroad. Mr. Edwards was, it is true, the circuit court clerk at London at that time, although not paying much attention to the office, he leaving it to his deputy. We got back there, and they demanded the record. Well, as custodian of the record, he knew there was a penalty against him if he allowed the original records of the court to be taken out of his county, and his deputy and he both declined to let the original records go, but offered, themselves, to have a copy made as quick as possible. Mr. Ramsey seemed to complain yesterday in his argument that we were not courteous to them in that respect. I will not tell what passed between them in private, but I will say this, that while they wanted us to travel on the Sabbath Day to Bowling Green, and on Monday argue the application before Judge Settle, we agreed that the transcript of the record should be made and would be made in time for them to get it on the early train on Monday morning, and meet them and Judge Settle at Louisville and argue the case there. It was done; Judge Settle heard us.

Mr. RAMSEY. Will you allow me to ask you a question there?

Mr. ALCORN. Certainly.

Mr. RAMSEY. Is it not a fact that we requested those papers to be furnished by the circuit court clerk, Mr. Edwards, or his deputies, by midnight of Saturday night? That would have enabled us to take the train on Saturday night. Is it not a fact that Mr. Edwards positively refused to allow me, as Doctor Hunter's attorney, to take the papers out of his office to my office, even to look at them, or to have a copy made of them?

Mr. ALCORN. Yes, sir.

Mr. EDWARDS. I would like to answer that question. That is not true. I was present and I said that I would refuse to allow you to take the papers out of the office and have copies made of them, but I said that I would put two stenographers at work to copy them as soon as I could.

Mr. RAMSEY. Is it not also true that we offered to furnish a man? I make the positive statement that it is true. We offered to furnish a man to have those papers copied in time, and he said he did not intend to keep his office open extra hours, or work on Sunday, or let us put a man in there to have those papers copied. He did not intend to put papers in our hands to rob him of his rights.

Mr. ALCOEN. He may have said that; if he did say that, he said right. That is not a matter of any consequence before this committee.

Now, on this same 2d day of November, 1903, we appeared before Judge Settle and argued the case. He associated with himself in the hearing of the motion to set aside the injunction granted by Judge Faulkner the Hon. Henry S. Barker, another judge of the court of appeals. He rendered a written opinion which he said was somewhat hurriedly prepared—you can see, gentlemen, that it is, as it bears the impress upon it, but not withstanding that we get some meat in it. He said:

I know of no rule or reason that would forbid the governing authority of the party in the district from deciding the contest between them at any time after action by the secretary of state, provided it be done in time to prepare the ballots with the name of a designated nominee on them for use at the election.

The governing authority, where? In the State? No. In the Nation? No. In the district? That is the construction placed upon the statute and the only construction that a lawyer who has any idea of the first principles of statutory construction would place upon it. There were the two concurring things that I suppose helped the secretary of state to change his mind and conclude that he had acted without jurisdiction and without authority; that he had exceeded his authority in first issuing a certificate in favor of Doctor Hunter. I do not charge that his change of mind had anything to do with the fact that his mind was changed the next day after the election when the Republican party had gone down in the State in inglorious defeat. But the fact remained that he then and there, only six days before the election, issued his notice to the various county court clerks expressly notifying them that he withdrew his certification to each of them to the effect that W. Godfrey Hunter was the nominee and entitled to the party emblem, and certified to them that D. C. Edwards and no one else was entitled to have his name printed under the party emblem.

Why is it done? Why is the secretary of state required to give this certificate? You will find the reason given below. As soon as he gets this opinion he can issue a certificate, as intimated by Judge Settle, at any time before the election, provided the clerks then have time enough to have the ballots printed. The clerk of each county court has imposed upon him the duty of having the official ballots printed. He can not have an official ballot printed until he has received a certificate from the secretary of state certifying to him who is the party nominee of any party to be voted for in his county or district. The clerks are shown not to have acted upon this erroneous certificate—I will call it by that mild name—of the secretary of state in favor of Doctor Hunter; so that no man can claim that he was prejudiced by the fact that he got there first on that proposition. The clerks whose depositions have been taken, and we have not taken them all because we thought it was unnecessary to introduce a whole lot of cumulative testimony, expressly say that until after the certificate of the secretary of state was received they did not have the ballots printed and issued.

Mr. CURRIER. You mean by that the second certificate?

Mr. ALCOEN. Yes, sir. Now, this first legal proposition arises in the case as to the fact of this certificate upon the failure of these clerks, for we find it stated in the record that in five counties of the

district Doctor Hunter's name appears upon the official ballot as the nominee of the party, in the teeth of the statute requiring the clerk to place no man under the official emblem of a party as its candidate unless his name is certified to him by the secretary of state. How happens it? Well, it may be that the clerks had a sort of halfway belief that they were right, or a whole belief—it is a matter of indifference to me—but, nevertheless, their act was void. 'This ballot, printed in Pulaski County, in Russell County, and the other three counties of the district, bearing the name of W. Godfrey Hunter, contained nowhere any mention even of the name of the regular nominee of the Republican party. The name that had been designated not only by the district committee, but by the secretary of state, as the only nominee, his name is not mentioned, because we have a peculiar form of ballot in Kentucky. We only print the name of the nominee. If a man wants to cast an independent vote there is a place left where he can write the name of the man for whom he can vote.

Mr. BYRD. Is it your contention that that is an illegal ballot because the wrong man was there?

Mr. ALCORN. Yes, sir; no ballot at all; void.

Mr. CURRIER. I think the committee would be very glad to hear you further on that point if your contention is that those ballots are not to be counted.

Mr. ALCORN. That is my contention, sir.

Mr. CURRIER. We would be very glad to hear you further upon that.

Mr. SULLIVAN. You mean counted for anybody?

Mr. ALCORN. I confess that I am without precedent or authority on the question because I find every case on the same line, or on similar lines, is based upon a statute different from the statutes of Kentucky. Under the statutes of New York under which the election was held in the case of Fairchild against Ward it is very true that Fairchild was decided at a court of last resort as possibly entitled to the nomination. In that case the court was said to have no jurisdiction, still the secretary of state seems to have had conferred upon him by the statute of New York some judicial authority, and he exercised that judicial authority by deciding that Mr. Ward was the party nominee, and therefore he placed Ward's name upon the ballot as the party nominee. In this case the secretary of state had no judicial discretion; he was simply a ministerial officer, and he acted as a ministerial officer intermediate between the governing authority and the county court clerk.

Mr. CURRIER. I will ask you, for information, what happened in New York. What did the canvassing board do with the Ward ballots; did they count them?

Mr. ALCORN. Yes; they counted them. The contention of Fairchild was that he was entitled to have them counted for him because he was the nominee. You will see when you examine the case that there is quite a material difference between this case and the Fairchild case.

Mr. BYRD. Was this merely the statute law of the State of Kentucky, or was it carrying out any provision of the State constitution?

Mr. ALCORN. That is carrying out a provision of the State constitution.

Mr. BYRD. Does the State constitution say anything about these devices?

Mr. ALCORN. No, sir.

Mr. WEEMS. It merely provides for a special ballot.

Mr. TALBOTT. But the legislature does provide for the Australian ballot.

Mr. CURRIER. The provision of the constitution was read. It is in the record.

Mr. ALCORN. It provides that election shall be held by secret official ballot provided at public expense to the voter at the polls, and it shall be the duty of the legislature to make all necessary laws for the carrying out of that provision of the constitution.

Mr. BYRD. The reason why I ask that question is that in some States, I think in Mississippi, things that are of the constitution are mandatory and things that are not of the constitution are in many instances merely directory.

Mr. ALCORN. Yes.

Mr. SULLIVAN. I think possibly some members of the committee may take the view that Cooper's name was not lawfully on the ballot in these five counties; and yet would feel a desire to respect the intention of the voters in these five counties who, on the face of things, voted for Hunter. What have you to say as to whether or not it was the actual intention of the voters of these five counties to vote for Mr. Hunter?

Mr. ALCORN. I thank you for suggesting that, for it brings me up to the last point that I desire to consider in this connection.

Mr. SULLIVAN. Have you discussed whether or not action in that line by a particular committeeman would have the effect of defeating the intention of voters?

Mr. TALBOTT. If all the ballots in the five counties were thrown out what would be the result?

Mr. ALCORN. Edwards would be elected.

Mr. SULLIVAN. The action that I refer to would be to preserve the intention of the voter, on the theory that he intended to vote for Hunter; and yet if the voter actually intended to vote for the party candidate such action by the committeeman would be to defeat the intention of the voter rather than to preserve it, for, as a matter of fact, the voter intended to vote not for Mr. Hunter, but for the party candidate.

Mr. ALCORN. That is a line of inquiry propounded yesterday by the gentleman sitting to your left, Mr. Weems. Now, my contention is that in that respect this case is dissimilar to the case of Fairchild and Ward. In that case Fairchild's name was printed in the ballot, and so was Ward's. The only difference was that Ward's name was printed under the official emblem and Fairchild's was not. In this case Hunter's name was printed on the ballot under the party emblem and Edwards's name was not printed at all. Then, in the Fairchild case there was no proof, as I believe—yes, there was some proof as to the preference of the voter, some voters testifying that they would have preferred Mr. Fairchild. In this case we have taken the deposition of sixty-five or seventy voters in Pulaski County, where we could get them to testify—because it was a matter of personal privilege—and we found that each one said that he voted under the log cabin, some saying that they voted for Hunter and the log cabin, but each one saying that had Edwards's name been under the party emblem, under the log cabin, he would have voted for him. Some said that they would pre-

fer Edwards and only voted for Hunter because they found Hunter's name there.

Mr. WEEEMS. Did any of them say that they did not know who was under the log cabin?

Mr. ALCORN. Yes; one man said that he did not know who was under the log cabin. I have not gone through it very carefully, but I think there were others. I did not superintend the taking of these depositions.

Mr. WEEEMS. None of them testified, excepting the one you remember, that they were under the impression that Edwards's name was under the log cabin?

Mr. ALCORN. This man does not say that he was under the impression that Edwards's name was under the log cabin. He did not know him.

Now, gentlemen of the committee, it may be that you do not properly appreciate the sincerity of those old veterans in the Republican cause in Kentucky when they come up and state that they voted under the log cabin every time. Every man whose party loyalty is tried and true, and many of them in this instance show that while they were supporters of Mr. Edwards in the county convention, when they went to the polls and they found that the ballots were printed with Hunter's name upon them as the party nominee, they put their stamp under the log cabin. Now, that was taking an advantage of the voter, whether it was done with the connivance of Mr. Hunter or by the negligence or failure of duty on the part of the county court clerks; and certainly the intention of the voter should be respected.

Mr. SULLIVAN. Is there a large independent vote in these five counties? Is there an overwhelming majority of votes cast for the emblem?

Mr. ALCORN. An overwhelming majority.

Mr. SULLIVAN. Is that the usual rule?

Mr. ALCORN. It is almost the invariable rule in that district. I can say that while the majority is very large, overwhelming, you will find in the elections there that, excepting sometimes when a certain gentleman who has previously represented them comes before them and has already had a respectable vote, in all other elections a man had better be in hades than come before the Republicans of the Eleventh Congressional district and say that he is an independent candidate.

Mr. SULLIVAN. Then you think that in those five counties a man who was under the emblem of the log cabin would defeat, perhaps, your ablest and best-known men who did not appear under that emblem?

Mr. ALCORN. Yes; or any one county. In Pulaski County Hunter received a majority of 1,100, which is the largest Republican county in the district. We contend that those 1,100 ballots ought to go out, or our contention is that it was the intention of the voters, each one of them, to vote for the nominee of the party, and that nominee being D. C. Edwards, the name of D. C. Edwards should have appeared on each one of the 1,500 votes in the county of Pulaski.

Mr. BYRD. Admitting that Edwards was the nominee of the party, then putting the name of Hunter where the law says Edwards name should go, does that in your opinion vitiate the ballot?

Mr. ALCORN. Yes, sir; that vitiates every ballot on which the name of Hunter was printed.

Mr. BYRD. The law says no other name shall go there except the party nominee, and the fact that it was there renders that vote void.

Mr. ALCORN. Yes, sir.

Mr. BYRD. Has this all been construed in the State courts?

Mr. ALCORN. No, sir; strange to say, it has not. The nearest construction to it is the case of Edwards against Lloyd, in the 24th Kentucky Law Reporter, where one of the parties had his name placed upon the ballot by petition, printed. It was in the county of Green, which owes a heavy railroad tax, and they did not want the sheriff elected; therefore the clerk at one precinct busied himself one day—the day of the election—in writing in the name of another man as the candidate of the opposition to this man whose name had been printed upon the ballot, and the voters were to stamp opposite this man whose name was written. The court of appeals held that inasmuch as the name of this man was written there by the clerk of the election, and before the ballot was handed to the voter, that the vote was void. I can not see the difference between that case and this. Here Hunter's name is printed upon the ballot when he is not the party nominee. There Lloyd's name was written upon the ballot when he was not the party nominee, and the court of appeals held that each and every vote cast for him was an absolute nullity. That is the nearest parallel case that I can find in the jurisprudence of Kentucky.

General DUDLEY. Our contention was that he was there by color of right.

Mr. MILLER. I would like to hear you upon that subject.

Mr. ALCORN. General Dudley presented that very fully and very forcibly. A color of right must be based upon some precedent or color of authority derived in good faith. In this case each and every clerk was notified by the secretary of state that Hunter was not the nominee; that Hunter's name was not to be printed upon the ballot under the party emblem, but that Edwards's name was to be printed. Hunter knew that; each county court clerk knew that; and no county court clerk had the power or the right to print any name upon the ballot except such as was certified to him by the secretary of state.

General DUDLEY. Within twenty days.

Mr. ALCORN. Not within twenty days. I take it, according to this judge, any time before the ballots could be distributed to the voter. That being the case, there was no pretense or color of authority on the part of the clerks to have this name printed upon any of these ballots. The clerk exceeded his authority, and, as suggested by Mr. Edwards yesterday, laid himself liable to a felony, indictment, and prosecution. When we find such a state of the case certainly it wipes out every pretense of color of authority. I do not lay much stress upon that. I think I can reach it in another way.

I submit now that each one of the votes in Pulaski and in Russell county—we have not taken the deposition of any clerks in other counties—which were counted for Hunter, shows that Hunter's name was printed under the party emblem on the official ballot. It is not pretended that Hunter received any vote in either one of those counties that was not counted for him by reason of the fact that his name was on the official ballot. Our contention is that each one of them should be excluded, 1,534 in Pulaski County and 400 and some odd in the county of Russell, making a difference by which Mr. Edwards will be declared elected by over 15 majority, just a little more than the people vindicated him at the primary election last August where these same questions were agitated.

Now, we contend in our notice that each one of these ballots in which Doctor Hunter's name was printed, was fraudulently procured by him to be printed for the purpose of promoting his interest and deceiving the voter and robbing Edwards of his rights. Of course, when you attempt to prove a fraud it is not to be expected that you will reach right into the man's heart and pull out the motives that animated him. You can only judge him by his acts and by his conduct. And tracing from the time before the Middlesboro convention until after this special November election, I think it is easily demonstrable that he is not only responsible for this confusion in the ballot, but that he did it in a deliberately fraudulent scheme to cheat the voters of their rights, and deprive this gentleman of acting as the real choice of the Republican party as its representative for the unexpired term of the Hon. Vincent Boreing. Now, before I begin the discussion of that question, possibly it is proper that I should refer to some things that have been said by counsel on the other side as to the matters pertaining to that Middlesboro convention.

Mr. WEEMS. Before you take up that I would like to refer to your brief. You will recall in your brief your position as to a few of these matters. With respect to these 80 or 90 votes that should be thrown out and cast for Edwards, you did not claim in the brief that all of Hunter's votes should be thrown out.

Mr. ALCORN. I don't remember; that brief was somewhat hurriedly prepared. That was safe enough. It is claimed that each and every one of those ballots should be counted for Edwards.

Mr. SULLIVAN. Are you going to discuss the validity of the call for the Middlesboro convention?

Mr. ALCORN. No, sir.

Mr. SULLIVAN. It is raised on the other side.

Mr. ALCORN. That is in the White case. I think they are interested in that.

Mr. THURSTON. I don't suppose that either party in the present contest can go back on that.

Mr. SULLIVAN. And also the legal right of adjournment.

Mr. ALCORN. Yes, sir.

Now, the distinguished counsel on the other side who closed the argument for contestee yesterday seems to have had some prejudice created in his mind, not by the record, but by something extraneous to the record, against the conduct and the character of Hon. J. S. Cooper, who was the chairman of the committee for the Eleventh Congressional district. I said to him at the time, under the mistaken belief that he had concluded his argument, that I would meet him on that proposition, because Judge Cooper is my friend. I have known him for years; I know him to be a gentleman, and I have seen him tried. Chairman Cooper has been found true to every trust intrusted to him. The counsel says that Cooper did not carry out his simple pledge. He did not read the record right. He says it was his simple pledge that he would count the vote and then go into the court-house and declare the result.

I believe Mr. Adams says that the agreement made between the contending parties at the suggestion of a representative of Doctor Hunter was that Cooper and Adams should be tellers representing Edwards and two other gentlemen should be tellers representing Hunter. Cooper was not selected by his own choice. That is not the kind of a man he is. But he is a man who never shirks a duty. It was then

agreed, if you will read the record, that inasmuch as the circuit court room of the court-house, which is the largest hall in town, was wholly inadequate to contain the audience that the assemblage would be called to order in front of the county court-house by the chairman of the county committee, and the agreement announced that the count would be made and then the tellers were to meet, not in the circuit court room, not in the court-house, but meet at that same place in front of the court-house. There is where they were to meet when the count was made. Judge Cooper did proceed to that same place again, called the assemblage to order, because he was the chairman of the county committee, and announced that the result was that Mr. Edwards had been found to have received a majority of the votes of the persons present, and therefore he was entitled, under the agreement, to the organization of the convention. But he did not go on to the court room, and for a very good reason.

It seems, if you will read the record—I think I am borne out fully in it—that as soon as Hunter's friends and supporters found that he was short—that there was a deficit in his vote—they immediately rushed his crowd to the circuit court room and filled it up, there being no room for anybody else in there. I said there were 30 or 40, but whether there were more I do not know. You see that it was a very easy matter when Judge Cooper came in there for them to raise a question and overthrow him. It looks like an attempt at fraud, inasmuch as the situation did not develop. And that only constitutes Cooper's shortcomings and dereliction of duty. I think if you will read the record you will find that he was worthy of your esteem and highest confidence instead of the vituperation placed upon him yesterday.

Now, then, Mr. Ramsey in his discussion yesterday referred to this convention and sought to rub away some of the cobwebs. I did not propose to discuss the convention. Mr. Ramsey said that when the convention was called to order the delegates from the county of Casey had no credentials and that his right to sit in the convention was contested by Mr. Yarberry, an ardent supporter of Mr. Hunter from the county of Adair. If you will read the testimony of Mr. Yarberry—if I misquote it I will be glad to hear the counsel say so—

Mr. BYRD. I would rather hear you on this law business than anything else. I would like to have you tell me—as I see here the Constitution says that there shall be an official ballot, and the legislature undertook to describe an official ballot which provided for an emblem, and the names to be printed, and so forth—do you or do you not think that when a ballot is an official ballot it takes a higher degree of sanctity under the law and that the law must be more strongly applied than where it is just the will of the voter? Do you know of any authority that gives any difference between the two? In many States the election is left to the parties to prepare their ballots and they may fix it as they please. Do you know of any law relative to official ballots or any decision anywhere in regard to that matter?

Mr. TALCORN. No, sir; nothing except that case which I cited.

Mr. TALBOTT (addressing Mr. Byrd). Do you mean the adjustment of the names on the ballot?

Mr. BYRD. The constitution of Kentucky says that there shall be an official ballot—that is, a ballot provided by law. The legislature comes

along and undertakes to say what an official ballot is. Now, I want to know if any other ballot than that described is valid or invalid?

Mr. ALCORN. It is not valid.

Mr. BYRD. Can it be counted or not counted?

Mr. ALCORN. No, sir; it can not.

Mr. TALBOTT. In other words, a name that is not authorized on the official ballot has no right to be counted?

Mr. ALCORN. Unless it is written in by the voter.

Mr. TALBOTT. In other words, the voter can elect to vote for somebody whose name is not on the ballot?

Mr. ALCORN. Yes, sir.

Mr. BYRD. In some States they make it mandatory.

Mr. WEEMS. Is not the current decision to this effect, that in the absence of an express statute regarding the ballot to be rejected—

Mr. ALCORN. Provided the voter has not been deceived by it I think you will find.

Mr. WEEMS. Is it not also settled as to who he is really voting for?

Mr. ALCORN. Any deception by which the voter is influenced in his vote vitiates the ballot.

Mr. SULLIVAN. Do you know any other rule of statutory construction which will permit any other kind of ballot to be used when the statute has prescribed a form of official ballot? Does not that exclude further forms?

Mr. ALCORN. I think it does.

Mr. MILLER. You were talking about the Middlesboro convention. I have noticed that both sides to this controversy, Mr. Hunter and Mr. Edwards, in taking their testimony, have seemed to attempt to get around the number of delegates that went into the Middlesboro convention, and also the number in the convention at London. In taking the testimony they have asked, in a general way, whether or not it is true that a very large majority of those at the Middlesboro convention were in the London convention and the witnesses have answered yes. But neither side has attempted to show the number of delegates that were actually in the Middlesboro convention or actually in the London convention. They seemed to have avoided showing that.

Mr. ALCORN. I don't think they have avoided it; it has simply resulted from the inability of the witnesses to give the information.

Mr. MILLER. I have not found it in the record. Is there anything in the record to show the number of delegates who actually participated in the Middlesboro convention before and after this adjournment, or alleged adjournment, excepting by the announcement of the vote on the question of the adoption of the report of the committee on the order of business or on the vote on adjournment? If there is anything in the record, I want my attention called to it. Another thing: Mr. Ramsey or General Dudley yesterday, in the argument regarding the Middlesboro convention or against the proposition of the right of that convention to adjourn, called attention to the fact, as I remember it, that there was not only a motion to adjourn to London, but when this motion was made to adjourn to London, at that time or before, a motion was made to meet in Monticello, Ky., and seems to have been voted down, and there was another motion to meet at Williamsburg, Ky., and voted down. Finally a motion prevailed to meet at London, Ky., by a vote of 223 to 123. It seems to me that there was consid-

erable discussion as to the propriety of an adjournment of that convention, when an attempt was made to adjourn to meet at three different places, and yet counsel have said nothing about it. It appears in the record.

Mr. RAMSEY. I will refer you to the affidavit of George W. Albrecht, who was an Edwards supporter.

Mr. ALCORN. An Edwards supporter? I would like to see it.

Mr. WHITE. Are there not affidavits on your side, or Mr. Hunter's side there, that show the chairman of the different counties of the Eleventh district who were present at the Middlesboro rump convention, or the London convention, who participated in the call of the roll?

Mr. ALCORN. No, sir. You know how those conventions are managed. The chairman represents his delegation, unless some independent man wants to vote differently from what the chairman announces.

Mr. CURRIER. Then they call the roll of the delegation.

Mr. WHITE. The rules of the Republican organization provide that the chairman shall test the vote of the county, and if the county vote is challenged only the delegate who challenges can vote his individual vote, and therefore I asked you this question, because it is important, if there is anything in the record on that point, and if there is I would like to get it.

Mr. ALCORN. I don't think there is anything on that point, and I do not regard it as material.

Mr. WHITE. We think it is.

Mr. RAMSEY. You may refer to this affidavit on page 638 of the record, where George W. Albrecht says:

That he was constantly present at all the deliberations of said convention, and that up to the time Chairman Sharpe left the convention his vote was always cast so as to favor what is known as the "Edwards" side. That about midnight a motion to adjourn until Monday morning was made by a "Hunter" delegate, which motion was voted down. That thereupon without the transaction of any intervening business, and in direct contravention of parliamentary law, the chairman undertook to put to the convention a motion to adjourn until Monday morning to meet at London. This affiant noted this attempted violation of parliamentary law and spoke of it to several other delegates, as also calling attention to the illegality of any adjournment to another place on the part of a temporary organization.

Mr. CURRIER. What construction that man puts upon "business" we do not know. You gentlemen who were present would know if any discussion intervened between those motions. Discussion is "business" within the meaning of that rule.

Mr. ALCORN. I wish to say in this connection that this man Albrecht—

Mr. MILLER. About midnight a motion to adjourn until Monday morning was made. Suppose the next motion was a motion to adjourn to London, Ky. Does any parliamentarian attempt to hold that a motion to adjourn to a specific place can not be immediately made after an ordinary motion to adjourn a convention?

Mr. CURRIER. In a convention where the rules do not fix the time of meeting?

Mr. TALBOTT. Had you adopted the rules for your convention at all?

Mr. CURRIER. Something must always be connected with a motion to adjourn fixing an hour. You can not have simply a motion to adjourn in the absence of a rule.

Mr. MILLER. Suppose it is in the nature of a motion to take a recess until Monday morning?

Mr. CURRIER. It does not occur to me that there is anything in this matter.

Mr. MILLER. No, I think not.

Mr. ALCORN. Now, our contention is that Mr. Hunter fraudulently procured the printing of his name on these ballots. That I take it is the gravest part of this case, and I ask your attention for a short time to the consideration of some propositions that I think will demonstrate the correctness of our contention so clearly that no man need have any doubt about it. I am glad that it is agreed that I shall not discuss any matters connected with the convention, excepting that I do want to refer to a matter with respect to that convention as showing the inception of this fraud of which we complain, that then and there a fraud was begun which has been attached to his case all the way through, up to the time that the last ballot was cast and up to the time that the certificate was awarded to him by the State election commissioners of Kentucky.

In the testimony of a man by the name of J. G. Yaden, who was a delegate to the convention, will be found this:

Just before the night session convened I was standing on the street talking to some one. Godfrey Hunter, one of his sons, a Mr. Yarberry, of Adair County, and two or three others came up the street and stopped near where I was standing. I heard a conversation pass between this crowd which was in substance as follows: One of the crowd asked if a nomination secured under those conditions would be held as legal. Godfrey Hunter remarked that David G. Colson had said it would. Then someone suggested that they get W. R. Ramsey's opinion, that he was a good lawyer; and then Mr. Yarberry suggested that they also advise with Ed. Morrow upon this point, that he was a good lawyer also. They said it would never do to allow the convention to adopt the majority report of the committee on credentials, and that if they could raise some disturbance and get the Edwards delegates either to adjourn the convention to meet on Monday morning or to adjourn to some other place other than Middlesboro, at which place the convention was being held, they would then organize themselves into a convention and proceed to make a nomination.

That throws a great flood of light upon certain things that happened during that night session, which commenced in a few days after this conversation was held between these two parties. The convention, in the vote for temporary chairman, and on the motion to adopt the credential committee's report and one or two other votes, had shown a majority of delegates as between Hunter and Edwards as clearly in favor of Edwards. If the convention was kept in session until the nomination was made, the result would be nomination of Mr. Edwards. Therefore they determined that they would spoil it. They determined, these conspirators, that they would take such steps as to prevent it. Middlesboro is a mining town. I have nothing to say against it, but it is one of the few towns in all of southeastern Kentucky where liquor is sold in open saloons under license, and it is sold pretty regularly and in large quantities. I should say that it is sold very liberally. Soon after the convention met, according to the concurrent testimony of more than a dozen witnesses, disorder began to prevail in the convention. There were jeers, hoots, yells, cursing, and swearing.

I don't ask you to consider alone the testimony of the Edwards men, or Mr. Edwards, but I call your attention to the testimony of E. L.

Stephens, of Whitley County, who was a candidate before that convention, and I also call your attention to the testimony of other men who were there. They tell you that it was not only disorderly but actually dangerous. They had gotten to that point where they believed it was dangerous to remain in session, for you know this place is right across the border from Virginia. If there are no Virginians present, I might say that they might go over there and get to shooting. We Kentuckians do not shoot. At any rate, this disorder was kept up. It is shown abundantly that it was confined to one side of the house. At last these delegates who were from the back communities—I might say very properly that large numbers were from the backwoods communities; a great many of them had never seen before that time an electric light; many of them had never been in a hall of the size of the one in which they were sitting; they were honest, faithful, and true patriots and good citizens, with plenty of good, hard, horse sense; but this disorder could not be stopped.

It is proven by the testimony of Sharp, the chairman, and the testimony of others, that the civil authorities of Middlesboro were called upon to preserve order, and that not one step was taken by them to do so. At last, in the midst of the excitement, the electric lights were turned off. Well, now, you can imagine the feelings of those people who had never seen an electric light before. From that brilliant lighting they were thrown into the darkness of hades. I tell you, gentlemen, the situation was dangerous, and it grew to be so bad that a worthy gentleman who had been a supporter of Hunter made a motion to adjourn the convention to Monday morning.

Mr. MILLER. Had Mr. Eversole been a supporter of Doctor Hunter up to this time?

Mr. ALCORN. Yes, sir. That motion was voted down. Then the work of the committee on credentials, except Jackson County, was progressed with. It was being discussed when Mr. Eversole, who had been a supporter of Hunter, mounted the platform, so as to get nearer the chairman, and moved that the convention adjourn to meet at London the next Monday morning at 9 o'clock. It was then the Sabbath day, past midnight. Immediately all over that hall the motion was seconded. It was put, and carried by a majority of 100—223 to 123.

Mr. Ramsey said yesterday that the point of order was made and that they could not adjourn. I call your attention to the testimony of Chairman Sharp, who says that the only point of order that was made was that there had been no business intervening between the motion to adjourn to Monday and the time this motion was made; but he says, however, that it was not necessary, as all of you know. Even I, with as little knowledge of parliamentary law as I have, know that it was not necessary. But Mr. Sharp says that the only point that was made was that the motion was not in order because no business had intervened between it and the motion to adjourn to Monday morning. The motion was carried.

Mr. MILLER. I am obliged to say that we will have to adjourn at this time and go into the House. I think we will be able to give you a little more time.

Mr. ALCORN. I would like to have fifteen or twenty minutes more this evening or to-morrow.

Mr. MILLER. We will therefore adjourn until to-morrow at 10 o'clock.

(Thereupon, at 12 o'clock noon, the committee adjourned to meet to-morrow morning, Thursday, January 12, 1905, at 10 o'clock a. m.)

THURSDAY, *January 12, 1905.*

Meeting was called to order at 10.30 a. m.

ARGUMENT OF J. W. ALCORN, ESQ.—Continued.

The CHAIRMAN. Gentlemen, you may proceed.

Mr. ALCORN. I announced yesterday that I would be able to get through in fifteen or twenty minutes, and I think I can do so within that time without any trouble.

Before resuming the argument I wish to make response to a motion made by counsel for the contestee, Hunter, at the conclusion of his argument, to exclude from the brief of counsel for contestant certain personal allusions to the contestee. He based the motion on the alleged ground that it was not based upon anything contained in the proof. I will not take up the time of the committee by any further response to that than simply to say that had the gentleman read the testimony of R. C. Tarter in the case of White against Hunter, at page 124, and the testimony of W. H. Clark in the case of Edwards against Hunter, at page 571, as well as the testimony of two or three other witnesses, he would have found that he had no right to make a charge of that kind.

When the committee adjourned on yesterday I had just begun a discussion of the proposition contended for by contestant, that all of these ballots under which Hunter's name were printed in the five counties were fraudulently procured by him to be issued by these respective county court clerks. I referred to the conversations had between Doctor Hunter and his friends during the recess of the convention at Middlesboro in the afternoon, where he said that it was not possible to defeat the report of the committee on credentials; that therefore they must take some other course; that they must force an adjournment, or force an adjournment to some other place, and that when the convention did adjourn then they would organize a convention of their own. I referred to the fact that immediately after the reconvening of the convention that evening these disorders began, were kept up, persistently kept up, and finally after midnight on Saturday night the motion to adjourn was made by a man who had been theretofore affiliated with and a supporter of Hunter.

I stated that a motion was carried by a vote of 223 to 123. The convention was declared adjourned by the chairman, the chairman, and the secretary left the hall, and according to the testimony of numbers of witnesses a large majority of the delegates left, only about 50 remaining in the hall. Just as the vote for adjournment was being taken, however, the proof shows that Hunter and his friends were seen in caucus or conclave just in front of the rostrum, for a large number of the delegates had left. Judge Denton, of Pulaski County, who was not admitted as a delegate to the convention, came to the

front and called for all the friends of Hunter and Ramsey to remain, not for the delegates to remain. Therefore, it being a call for the supporters of those two men, the natural inference of the others would be that it was a caucus, and they went off. But immediately after that, when the convention hall had been pretty well cleared of persons who were antagonistic to Hunter in the convention proceedings, then a delegate from Bell County, a supporter of Hunter, was elected chairman. Significant to relate, that very man was the man who is shown by the testimony of the county attorney of his county to have been the one who turned off the electric lights just before the motion to adjourn was made, and of which several delegates speak as causing them great alarm and trepidation.

Now, I will attempt to go hastily over the matter. The convention adjourned, as it had a right to do. Certainly these men were going on the idea that it had no right to adjourn at all. I am not going on that theory.

The convention had been organized, it had been called to order by the chairman of the district committee, the temporary organization had been effected, and therefore the chairman of the district committee had handed over the control of the interests of the Republican party in the Eleventh Congressional district of Kentucky. It was then the sovereign representative body of the Republican party in that district. It had authority to adjourn, to take recesses, but of course not to adjourn without day unless for sufficient cause shown. You will find no authority against that. They had a right to adjourn from time to time or from place to place if necessary, or from that place to some other place, and as I suggested in connection with a query propounded on day before yesterday, would not they have had the right to adjourn had a fire occurred, or in the event a pestilence had broken out? Would they have been required to stay there, soldiers brave, tried and true, and face the danger of a pestilence simply in the interests of the Republican party when there were plenty of other safe places in which they could have met? That is the way to look at it.

General DUDLEY. If you will not object, would you cite to the committee the affidavit on which you rely for this statement about the turning off of the light?

Mr. ALCORN. The county attorney of Bell County, W. T. Davis.

General DUDLEY. What is the page?

Mr. ALCORN. I don't remember the page. Now, after they had rid themselves of the presence of that majority, which they saw inevitably stood as a stone wall against the claims and aspirations of Mr. Hunter, and after they had organized themselves into this little caucus, composed of the friends of Hunter and Ramsey, and not through the delegates chosen pursuant to the call of the district committee of the Republican party of the Eleventh Congressional district, they then made a motion to elect this man Rice as chairman of that body.

It nowhere appears that there was any notification issued to any member of the convention or any delegate to the convention that he was intended to preside in the regular order of business of the convention, but they did proceed. This was after midnight, and it was on Sunday morning, but of course having no opposition the wheels moved smoothly in a very short time. They ousted the delegates that were disagreeable to them, although they were not there to put in any claim or make any protest. I don't know how, but they elected this tempo-

rary chairman and secretary, and after they had done that they proceeded to put candidates in nomination, but even that was done in such a hasty and incongruous manner that it appears that when the result of the ballot was announced there were those who were still not sure about things. At least one of the contending gentlemen was uncertain as to the result, and he went forward in a calm, deliberate way proposing to accept the nomination, and would have accepted it—had accepted it—and would have made a speech glowing with eloquence and feelings of great regard for the glorious Republicans of the district if he had not been suddenly stopped and notified that there was a mistake, and Doctor Hunter was declared the nominee. Then he turned around and accepted the nomination for Hunter. He could accept it for himself or anybody else; he could act as a member of the State committee or he could act as counsel. I refer to these matters for the purpose of showing how this organization was controlled and the methods that animated it.

Well, the nomination was made. It was on Sunday. The statutes of Kentucky require that the names shall be certified under a proper acknowledgment before an officer—certified and acknowledged before an officer. Of course an acknowledgment taken on Sunday, they thought, was not valid. Probably Judge Rorher, the district legal adviser, had told them that it was not valid. Therefore they got on the train which passed Middlesboro some before midnight, and took the chairman and the secretary with them down to the station 50 miles south of there, where it would arrive after midnight, aroused a notary, and got him to take the acknowledgment. Then we find Doctor Hunter and his attorneys together. Judge Rorher, a Democrat and close personal friend of the Democratic secretary of state; Mr. Metcalf, a member of the advisory board of the Democratic campaign committee—one goes to Frankfort and the other goes to Louisville.

Why this haste? There was no danger now that Mr. Edwards would get any certificate of nomination, could not get ahead of them. They could have gone on the morning train Monday morning and have been there. It looks like a sinister motive. When they got there—when Mr. Rorher gets to Frankfort he files his certificate at 9 o'clock; and when Mr. Metcalf gets to Louisville he gets up the secretary of state and they represent themselves to him as attorneys for Mr. Hunter and hold out to him the glowing prospect that it would result in favor of the Democratic ticket at the ensuing regular elections provided Hunter's name was placed upon the official ballot. Of course we can not say that that influenced him. He went to Frankfort, and there were some inducements held out to him by Judge Rorher. Mr. Edwards's certificate was filed the same day. That raised the question as to what they should do. Under the statutes of Kentucky he had no right to have a certificate issued to either one of them. Just as soon as the men supposed to be the governing authority of the party in the district could reach there he certified Mr. Edwards's name.

Mr. WEEMS. Under what circumstances does the constitution of Kentucky provide that the secretary of state shall consult or be governed by the governing authority?

Mr. ALCORN. When two or more persons of the same political party each claim to be the nominee.

Mr. WEEMS. Is it that, or is it where two or more persons constitute the officers, or claim to be the officers, of a convention? What is the language of the rule?

Mr. ALCORN (reading):

In the event two or more persons who have filed certificates of nomination with the said secretary of state or county clerk shall claim to be the nominee of the same political party, the governing authority of said political party shall designate in writing to said secretary of state and county clerk which of said candidates shall be entitled to the party emblem.

Certainly there was some reason for this. The secretary of state in some way was induced to violate his duty. He issued his certificate to the clerks certifying Hunter's name and, as I said yesterday, they were utterly void.

I want to refer to the proof as to the conferences between his counsel and the members of the Democratic committee and with Doctor Hunter himself. I want to cite that. But now, when Mr. Edwards filed his injunction proceedings to have his rights established by the courts, Hunter interposes, as we contend, knowing he was not the nominee of the party, knowing he was nominated by simply a little caucus of a part of the delegates, nominated by a body that had never been called together by the chairman of the district committee or anybody representing the chairman of the district committee; called together by a man who was not admitted as a delegate to the convention. He knows that. The proof as to his declared intentions under certain contingencies shows that. He resisted that process all the way through. Instead of calling on the governing authority, or that which is claimed to be the governing authority, to pass upon the question, he claimed, it seems, that the district committee was the governing authority, and that Mr. Cooper, who had certified to Edwards, was not the governing authority. Instead of doing that he simply comes to court to fight and resist. He takes no steps toward an amicable settlement of it in the party lines. Then, when Cooper called the State committee together to pass upon the question as to whether or not he is the governing authority, we find him having his own attorney representing as a proxy one of the members of the State committee.

How many other proxies were procured by him under similar circumstances we do not know. That much we learn by the fact that we know this attorney represented Hunter in these proceedings as his legal adviser. As I said on yesterday in response to a question by the gentleman from New Hampshire—I refer to this for the purpose of showing that the poison had been injected—inasmuch as the committee acted in such a singular way, we have a right to think that the poison was infused and the wrong was done. They exceeded their authority by reaching this most anomalous result, assertive of their authority in the face of the plain rules of the committee. Then, when that question has been settled by the district committee, and it was presumed to be done by Mr. Edwards just as soon as possible, there is the contest between the men, Edwards all the time going to his party for support and appealing to his party, the other men simply going into the courts, resisting, and taking no proper steps. When that was done, when the district committee, the governing authority, according to Hunter's own contention, had decided in favor of Edwards, we find him in the courts.

The election was on the 10th day of November. On the 4th or 5th day of November we find him instituting suit in the Jefferson County circuit court against the secretary of state to enjoin him from doing an act which he had already done, the certifying of Edwards's name.

He instituted that suit in the face of the plain provisions of the code of practice, that the court could not under any possible circumstances have jurisdiction in the case. It was instituted for purposes of delay. The only court in which he could have found jurisdiction was in the circuit court of Franklin County, the legal residence of the secretary of state; or some other county in the judicial district. He did not do that. He kept up those methods until the Saturday before election, creating confusion all through the district. Then, when he had at last reached the end of his tether, when Judge Field had decided that he had no jurisdiction, the delay had accomplished, as he thought, his purpose.

In the deposition of John S. May, the county court clerk of Pulaski County, the county in which Hunter is certified to have received 1,535 votes at that election, this John S. May admits in his deposition that he was an ardent supporter of Hunter in the election. We find as an exhibit, on page 143, proved by that witness, this significant telegram:

LOUISVILLE, KY., November 6.

JOHN S. MAY:

The State central committee having declared me the nominee and entitled to the log cabin, my name should be placed under the emblem. This action is final. I hope you will do this. Gwathmey, secretary of the committee, will wire you. It is not necessary for Hill to notify you of the committee's actions.

W. GODFREY HUNTER.

You will find that on account of the fact that Mr. White had gotten in ahead of us and taken certain depositions we had to take the proof made by him, because of the fact that he had taken from these witnesses certain exhibits. There we find another beginning of fraud. We find it all the way through. And we find here that he boldly advised the county court clerk to disregard the plain provisions of the statutes of Kentucky. Under the statutes of Kentucky the county court clerk could not know, except through the certificate of the secretary of state, who was entitled to be printed on the ballot as the nominee of any political party. The governing authority in the contingency which there existed designated to the secretary of state who was entitled to have his name printed as the party nominee under the log cabin, and that governing authority had acted, and the secretary of state had been certified to this clerk, as he admits in his deposition, that Edwards was entitled to have his name printed upon the official ballot as the Republican nominee to be voted for. He ignored that—disregarded it. Why? Simply because he had received this telegram from his leader, W. Godfrey Hunter. He was obeying the behest of the candidate instead of the mandate of the law.

Now, that brings up the question: In the face of his imperative duty to print such names alone on the ballot as are certified to him by the secretary of state, he prints a name never certified to him regularly by the secretary of state, and although the secretary of state had theretofore under authority issued to him formally certified this name of Hunter, he had on the 4th day of November certified to him that that was an error, and that it was withdrawn.

Mr. SULLIVAN. Had the ballots been printed?

Mr. ALCORN. No, sir.

Mr. TALBOTT. Somebody made the statement that in various counties the ballots were printed both ways so as to facilitate the outcome.

Mr. ALCORN. That was the case in a number of instances, but not in this.

Mr. TALBOTT. These ballots were printed after the 6th of November.

Mr. ALCORN. Printed on the same day. Some of them were printed that afternoon. The forms were set up and they were ready to print them.

Mr. SULLIVAN. How many of those five counties had had two sets of ballots printed—do you know?

Mr. ALCORN. No, sir. I know it was proven to be the case in several counties.

Mr. TALBOTT. You don't know whether these five counties were among them?

Mr. ALCORN. I only know it from hearsay, except in Russell County, where it was proven that the clerk had two sets; but as to the others it was mere hearsay.

Now, the clerk, in defiance of law and in obedience to the commands of his political leader, has the ballots printed with the name of Hunter as the nominee of the Republican party. That, I say, was in utter defiance of law, and in having that ballot so printed he disobeyed the mandate of the law. He could only know from a certificate of the secretary of state who was the Republican nominee. He had that information in his possession and under his control, duly imparted to him, and yet he disregarded it. That, then, brings up the question propounded to me on yesterday by the gentleman from Mississippi—I am sorry he is not here—as to what is meant by an official ballot; as to whether any ballot other than an official ballot can be used. In the very first clause of article 3 of the Kentucky election laws, section 10, will be found this provision:

The voting shall be by secret official ballots, printed and distributed as hereinafter provided, and no other ballot shall be used.

Now, you gentlemen will mark my contention that no ballot is an official ballot unless it is printed in accordance with the requirements of the election law. The election law requires that in the case of the district candidate the secretary of state shall certify to the county court clerk the names of the party nominees, and the clerk then shall be authorized to have those names printed on the ballot. Now, in this case, when he had no certificate from the secretary of state other than that which showed the name of D. C. Edwards as nominee of the Republican party, he ignored that in violation of the statutes and had Doctor Hunter's name printed upon the ballot. That, I contend, made the ballot entirely void—no ballot at all. It was not the official ballot, because it was not printed in accordance with the requirements of the election laws of Kentucky. Therefore every one of those ballots should go out, and every one of them should be deducted from Hunter, because it is proven that Hunter's name was printed on these ballots and that there was no ballot with Edwards's name printed on it in that county of Pulaski. The natural presumption is that the only votes that Hunter received in that county were the votes cast under the log cabin.

Mr. TALBOTT. All the candidates were on that ballot?

Mr. ALCORN. Oh, no.

Mr. TALBOTT. Was not White's name on the ballot?

Mr. ALCORN. Mr. White's name was on the ballot; it was official as to White, but not as to Hunter.

Mr. TALBOTT. A ballot which was cast for White ought not to be thrown out?

Mr. ALCORN. No; I do not contend that.

General DUDLEY. How can a ballot be voted for one and not for another?

Mr. ALCORN. I do not think it can be seriously contended that if the clerk had printed a name none had ever heard of before that that would have been a candidate. There is only one case at all parallel to this. I think the facts in this case show fraud on the part of Hunter from beginning to end, and on the part of the county court clerk of Pulaski County and of Russell County.

A somewhat similar case arose before the Fifty-fourth Congress in the case of Hopkins against Kendall. In that case the county court clerk in one county, in order to promote the interests of his candidate, had two columns printed on the official ballot. It was the election of county officers as well as the election for members of Congress. The county officers were on the ticket under the log-cabin device and the nominee of the Republican party for Congress was under the title "Republican party." That placed the nominee of the Republican party in another column and under the device of the raccoon and the title of the Republican party. That case was brought here before Congress on a contest, and the committee decided that they could not interfere with it, that that fraud would go; but when it was presented to the House on the report of the minority, the House, by a vote of 197 to 91, vigorously adopted the minority report; and it ought to have been adopted, because no such fraud as that should be tolerated.

Mr. SULLIVAN. There is no allegation of fraud in connection with the manner of casting the ballot in this connection, is there?

Mr. ALCORN. No, sir—well, except in one or two instances—

Mr. SULLIVAN. The only fraud you allege is as to the manner of getting the name on the official ballot. There is no other allegation of fraud?

Mr. ALCORN. It does not become material by reason of the lack of proof on that subject. We did not follow it up.

Mr. WEEMS. Suppose the public official had made an error in the ballot, and it had not been the county clerk but had been through some other public agent. Would that make the ballot fraudulent?

Mr. ALCORN. If done fraudulently. That was decided in the case of Hopkins against Kendall.

Mr. WEEMS. Does the fact that through the organization of society a man makes a mistake through one of his agents make that a good ground for the disfranchisement of an innocent voter where that voter found the ballot in that way and deliberately votes that way?

Mr. ALCORN. That might appear to be very harsh in some instances, but it is better that a few should suffer than that fraud should prevail.

Mr. WEEMS. But as to that particular voter there is no fraud.

Mr. TALBOTT. That would appear to be a fraud upon the voter. The voter is a Republican, say. He takes up his ballot and he finds the nominee on the official ballot as the Republican candidate under the party device. He accepts that as correct and votes it. The fraud is on the voter.

Mr. WEEMS. It may be.

Mr. TALBOTT. But the man who has been benefited by that ought not to be.

Mr. WEEMS. There may be a thousand men who vote. One of them may be conscious of the fraud played upon him and the other nine hundred and ninety-nine may have found the ballot was printed so as to stop them from doing what they otherwise could have done—taking a lead pencil and writing in the name.

Mr. ALCORN. When that fraud is shown, the fraud attaches to the whole thing. That was the principle decided in the *Hopkins v. Kendall* case. When you find any act tainted with fraud, such as is shown in that case, and as we have abundance of proof to show in this case, the real nominee should be entitled to that.

Mr. MILLER. Is there any evidence to show that there was any mistake in the printing of the ballot?

Mr. ALCORN. No, sir; deliberately done.

Mr. WEEMS. What you propose to do is to disfranchise the voter for a fraud in the organization of society itself?

Mr. ALCORN. We do not propose to disfranchise the voter; we propose to carry out the intention of the voter, because we have taken the testimony of 70 voters in that county of Pulaski, and we show by not quite all of them that they always vote under the log cabin. In the case of each one of them they voted for Hunter because they found his name printed under the log cabin. Had Edward's name been there they would have voted for him, some of them more readily than they voted for Hunter. They voted for Hunter because they voted for the party device. As suggested by the gentleman from Maryland, it is not only a fraud upon the party, but a fraud upon the people and upon every individual voter who was required to cast his vote in the county of Pulaski on that day. Now, gentlemen, I have this to say in conclusion: Mr. Edwards, as he said to you, does not contest this for the perquisites attached to it. There is a principle involved in this case. Our State of Kentucky has been torn by charges and countercharges of fraudulent manipulation in elections. A healthy sentiment is growing up among the people of the State of Kentucky in favor of honesty in elections, whether that honesty helps one side or the other.

We are getting rid of the old rubbish in the parties. This young man Edwards came to that county only a few years ago, though that county is the place of his father's birth. He settled down and went quietly to business, never engaging in such machine politics as has caused men to lose confidence in party politics, but, all the time fighting upon a high plane, he has won the respect and the esteem of the people of that and the adjoining counties, and the best evidence to which I can cite you is the fact that on the day of the mass convention in his own county, although he was opposed by two native-born men in that county, when the masses turned out, the glorious masses of Laurel county, one of the most intelligent counties in that part of the State of Kentucky, every man who testified on the subject tells you that that convention was emphatically in favor of Edwards, and they know that a man who did come to Congress with a certificate had but two-tenths and Edwards had eight-tenths. That is the character of the man they have found him to be. He will stand true to the principles of honesty and fair dealing. For that reason he comes here and asks this committee to investigate this case. He believes that he has presented such a case of fraud as ought to be discountenanced by every man who is fond of administering justice and fairness and upholding

the rights of the people as against the mere machine methods of practical politics. I thank you.

Mr. SULLIVAN. Mr. Weems is of the opinion, after reading the record, that only one of the men examined was deceived.

Mr. ALCORN. I note that; I read it hastily. Each one of the 69 or 70 men says that had Edwards's name been on the ballot he would have voted for him, and he voted for Hunter because he was under the log cabin.

Mr. SULLIVAN. Do not those men also say that they knew Hunter's name was on the ballot?

Mr. ALCORN. Yes.

Mr. SULLIVAN. Therefore they consciously voted for Hunter.

Mr. ALCORN. Because of the fraud practiced upon them.

Mr. CURRIER. I think they would have voted for anybody under the emblem.

Mr. ALCORN. They voted for the man whom they thought to be the representative of the party.

Mr. SULLIVAN. Then, as I understand it, so far as the record shows, only one man said he was deceived. Do you really believe that he believed he was voting for Edwards?

Mr. ALCORN. I do not stand prepared to admit that. Of course, I defer greatly to the recollection of the gentleman from New York on that subject.

Mr. SULLIVAN. I take it that unless you can satisfy this committee that the men who voted for Hunter in these five counties ought to be disfranchised you can not prevail in this case. If you have only the testimony of one person, how can you expect the committee to assume that all the men who voted for Hunter in these five counties were deceived?

Mr. ALCORN. Because of the fraud practiced. The men voted for the man who was supposed to be the party nominee and not for the individual; in other words, that would be allowing the perpetrator of a fraud to become a beneficiary.

Mr. WEEMS. Of these 69 men who testified as to their knowledge of this, a few said that they thought Edwards was right and only one testified that he thought Hunter was right.

General DUDLEY. What is your idea of what the record shows about Wayne County?

Mr. ALCORN. There was no testimony taken in Wayne County.

Mr. TALBOTT. Your contention is that the ballot as to Hunter in these five counties was absolutely void?

Mr. ALCORN. Yes, sir.

I thank you, gentlemen, for your kind attention.

Mr. MILLER (the chairman). Before we proceed with the matter further I would like to inquire if any of you gentlemen want to file any briefs in the case?

General DUDLEY. I will say that we are preparing a brief in response to the Edwards brief; and we will also reply to White. At the present moment Judge Ramsey is working on it instead of being here.

Mr. CURRIER. If you still have a brief in preparation it gives you the close in this case, to which you are not entitled.

General DUDLEY. I understood that the committee intended to allow me to file the brief.

Mr. MILLER. If we permit you to file a brief, in justice to these other parties they should have the opportunity to file a brief in reply.

General DUDLEY. I take it that it was understood that we would have the privilege of filing the brief.

Mr. MILLER. How soon will that be ready?

General DUDLEY. Just as soon as possible; we were at work on it last night.

Mr. MILLER. Can you designate the time?

General DUDLEY. I think the typewriters will be through with it before to-morrow morning.

Mr. MILLER. Would you say that it could be filed to-morrow morning?

General DUDLEY. To-morrow morning.

Mr. MILLER. How much time will you gentlemen desire to file a reply brief, if you consider it necessary?

Mr. ALCORN. As I announced to the committee on Tuesday, my engagements almost imperatively require me to return by Saturday. I have a number of cases set for trial in the courts in my division on next Monday. The opposing counsel have very kindly held them up this week for my benefit, and they are cases which would have been disposed of this week. I made that arrangement; could not have done any better in fact.

Mr. CURRIER. It is then of some consequence possibly to Mr. Edwards that this brief for Dr. Hunter in the Edwards case should be in, so that Judge Alcorn can have an opportunity to look it over to-morrow.

Mr. SULLIVAN. I do not suppose, gentlemen, that you will have anything new in the case?

General DUDLEY. We are to keep our briefs within the line of the argument now before the committee.

Mr. ALCORN. Do counsel expect to cite any authorities not referred to in their argument?

General DUDLEY. No, sir.

Mr. MILLER. Judge Alcorn, when do you leave?

Mr. ALCORN. I hoped to leave this afternoon.

General DUDLEY. It will be impossible to get our brief in print this afternoon. It takes a little time to have a document of that kind printed, but we will have it in type, that is typewritten, so that it will be here to-morrow.

Mr. MILLER. How much time do you want, Senator Thurston?

Senator THURSTON. If we shall care to file a brief, we can file it, a typewritten copy, in twenty-four hours, I presume.

Mr. MILLER. We will allow you gentlemen sufficient time to file briefs, but it is not fair to Edwards and White that this brief should be filed after the closing of the argument in the case, and not sufficient opportunity for the other side to say anything in reply.

General DUDLEY. We do not wish to take any such advantage. It is our misfortune that the brief has been delayed. I think I can say that there will be a typewritten copy before you to-morrow.

Mr. MILLER. What is the wish of the committee in relation to the case between Mr. White and Mr. Hunter.

Mr. CURRIER. I think we should go on until 12 o'clock.

Mr. MILLER. You may proceed then, Senator.

ARGUMENT OF HON. JOHN M. THURSTON, COUNSEL FOR HON. JOHN D. WHITE.

Senator THURSTON. Mr. Chairman and gentlemen of the committee, there are two aspects in this case that I think the committee should consider in the first instance. One is the mere matter as to what man shall sit in Congress, or be held entitled to the seat. It matters but little to the country at large as to which of these men is seated in the Congress of the United States. It can have no political significance, because it would not materially add to or detract from the party lines as numerically found in the House of Representatives. It can matter but little to any one of the candidates. The sitting member, in the order of things, as has happened so often heretofore, will probably serve out almost all of this session of Congress. The contestant Edwards has but little to gain from a personal or political standpoint, because whatever honor attaches to being a member of Congress will become his after the 4th of March under another election. The contestant White has nothing to gain in the matter of honor, because he has served for several sessions as a member of Congress heretofore.

I take it for granted that the mere matter of salary does not enter into the hopes or aspirations of any one of the candidates now before this committee. On the other hand, I believe there is a higher duty that this committee should address itself to, and it is this: A process of evolution has been going on in this country for some years past, designed to secure the purity and honesty of elections. It had its inception in the universal knowledge that there was behind the returns in every election, at least in some parts of the country—different parts from time to time—corrupt practices, abuses of power, and frauds that were rapidly bringing our elective system into disrepute, and justly so. There were no safeguards whatever, so far as I know, in any State until recent years. Without a nomination, under the old law as it stood before the Australian ballot system was adopted, a man on election morning would go to the polls and find the ticket of another party, take it to a printer and have it duplicated in form, size, style, and type, and print any name on that ticket for any office he pleased. There were no restrictions as to the manner in which conventions should be held or nominations made, and there were but very few safeguards generally in the States thrown around the exercise of the franchise at the polls.

The crying evil was presented, and our legislatures, out of the honest desire to secure honesty in American elections, proceeded to address themselves to discovering a remedy. They found it, or at least they thought they did so, in the so-called Australian ballot laws of another country—a country in advance of us in the effort to secure fair elections. That Australian ballot law, perhaps not in words, is not followed literally in every instance, but in substance has now been adopted in almost all of the States of the Union, and it is the universal opinion that its workings have been beneficial, and have surrounded the matter of nominations and elections with safeguards which were sadly needed, and which we would not now give up. At first, in most of the States, it was considered sufficient to enact new legislation governing the matters of elections themselves, and surrounding the voter at the polls with safeguards so that his real wishes might be ascertained and

respected; so that no fraud could be perpetrated upon him, and so that he could possibly make no mistake in the casting of his ballot.

After experiments under these laws governing the elections themselves, it was discovered in many States that the law had not yet reached the heart of the evil; that back of it was the most serious trouble; that back of it was the danger point; that back of it was the opportunity to still continue sharp political practices, chicanery, abuse of power, and the perpetration of fraud. And most of our legislatures decided that it was as much necessary, for the procuring of honest elections, that the methods of party organizations should be defined by law, and that restrictions and limitations should be placed upon the right of a political party or a political candidate for office, a failure to comply with which would make him ineligible for a place upon the ticket. And these laws I believe—the general opinion is—have been beneficial.

Now, that, to a certain extent, disturbed all our preconceived notions as to what the rule ought to be with reference to the decision of contested cases in attempting to give judgment in favor of the real wishes of the electorate at the polls. I start out with the proposition that in the very nature of things the old rule that a voter can be supposed to have intended to vote for every name upon his ticket, and that the fact that he did place a ticket under the old system in the ballot box, indicating his wishes and his will, has been entirely abrogated, and ought to be abrogated, under these primary and election laws that have been since enacted in accordance with the Australian system. But I insist that every decision which has grown up into accepted law, whereby men who have secured nominations and elections by the sharpest possible political practices, by virtual deception of the voters in placing names upon tickets, have no longer weight under the Australian ballot system; and if these new laws are to mean anything, if they are to correct the evils which we all admit existed, it must necessarily be so.

Kentucky went further than most States, because while it was unnecessary to do so they did, and, through a constitutional change ratified by the people, indicated their belief that there was a crying need for reform and restriction in the matter of carrying on politics and elections. It was not necessary for the people of Kentucky to enact that constitutional provision. All power rested in their legislature as fully and as completely as it does now. But it is significant of the sentiment of the people of Kentucky in their demand and their wish for restrictions to be thrown around the manner of political affairs. And the constitutional provision in the State of Kentucky is simply a limitation upon the legislature and upon the people under which no man in the State has a right to cast a ballot that is not in accordance with the provision of the constitution as fulfilled by the enactment of the legislature thereunder.

One thing is certain. These primary laws, these laws governing the calling of conventions, these laws prescribing the manner in which names shall be placed upon the ticket, are absolutely ineffective, and the whole body politic is thrown back under the old system if they are not to be observed and fulfilled. If a man can evade them in securing a nomination, if he can get his name on the ticket in any other way without being under the limitations of the law as it stands to-day, the provisions are absolutely null and useless; they amount to nothing.

For the mere fact that an election officer or a party official exercising power in placing candidates in nomination to secure votes at the polls may be punished, that furnishes no remedy to the American people. Punishment of a guilty official for his willful violation of the laws results in an election of a man who, if the law had been applied, would not have been elected. His punishment is nothing so far as the American people are concerned. The will of the people is that we shall have honest elections, conducted in strict accordance with the laws that the legislature enacts.

And another thing: Great stress is oftentimes laid upon results or decisions which are said to disfranchise the people. Franchise is a privilege; it is not a right of any man in the world. It is subject to all proper legislative restrictions. We did not need in this country to confer suffrage upon the colored people. They had no rights until it was conferred upon them by the Constitution of the United States or by the laws of the States in which they lived. Women have claimed from time to time the right of suffrage, and in some of our Western States they have made the welkin ring with their insistence upon the inalienable right of suffrage. They have no right, but they have just as much right as men have when, and only when, the law of the land gives it to them. Legislatures may limit that right; they may limit it by age qualifications, they may limit it by naturalization qualifications, they may limit it by length of residence qualifications, and they may limit it in various ways. They may limit it by property qualifications, by educational qualifications, and the only right there is of suffrage in any man in this country is the right to exercise his franchise subject to limitations in accordance with the law of the land.

When a legislature in its wisdom, in order to correct an evil that goes to the welfare of the whole country, places additional limitations and restrictions upon the right of a man to vote it is depriving him of no inalienable right. It is still leaving him the elective franchise; but in order to secure it he must exercise it strictly in accordance with the provisions of the law. You may say that works harshly sometimes, but it is infinitely better that the individual by the tens or hundreds or thousands shall be deprived of their exercise of the elective franchise than that these wrongs and frauds that have been permeating the whole body politic of our country without regard to party shall continue.

So I approach the consideration of the Kentucky laws in the line of my suggestion, that those laws were made for the purpose of limiting the right of suffrage, of limiting it to a full and complete compliance with the law; but while the laws have not been complied with, a vote cast in any other way, or for any candidate not upon the ticket in accordance with the law, is, in my judgment, absolutely void.

The laws of Kentucky have provided how the names of men shall be placed upon tickets; but first they have made a broader provision, and so have nearly all the States, and that is, they have permitted political organizations to adopt pictorial devices to be placed at the head of their political columns so as to advise the voter, the learned and the ignorant as well, where he can safely vote his political convictions. They have used pictures instead of words, because there is more or less illiteracy among the electors in all parts of our country. Men can read pictures although they may not be able to read books,

and the policy of the law upon the Australian ballot is that a man can go to the polls without asking a single question, without inquiry into the local political conditions, without knowing the name of a political candidate, and can safely vote for his party designation; and as a matter of fact—and this committee must consider it, because you are well aware of it—to-day in almost all of our State and other elections, especially in those where the ballot, as it was in my State this fall, is 5 feet 5 inches long, there is not one man in ten, probably not one man in twenty, who is a real party man that cares what name is on that ballot—that is, any individual wishing to vote for any other individual, who desires to exercise a choice as between which particular man and another particular man shall go to the legislature or to Congress, may do so—but the desire is, and the wish and will of the voter is, to vote for a ticket of his party. And that is why we have so many straight tickets voted.

But I say the old rule of law is changed, and if there are no ruling authorities along that line it is time there were precedents set to advise the people of the United States that there is safety in the American voter's going to the polls without taking the trouble and vexing himself with the duty of going all along down the list and taking out this name and the other. He can safely go there and put his mark opposite the party designation and thereby express his will. And I go a little further. I say that any name that creeps upon that party ballot under that device is a legal fraud upon every voter who goes to the polls. I say it does not record the vote. The evidence of voters who have voted ought not to be taken. You ought not permit them to be called before the bar of justice in a contested-election case and testify as to how they thought they were voting, or whether they intended to vote for the man under the party designation or for the individual. That may have been wise and proper under the old system; but under the Australian ballot—which has surrounded the elector with political safety, which gives him the right of secrecy at the polls, where he stands only in the presence of his God and his own conscience—it ought not to be permitted in any court or before any committee that the individual voter shall be called to the witness stand to testify as to how he intended to vote, or whether he was deceived or not.

I take the position that that revolutionizes, and improperly revolutionizes, the whole theory of the ballot law of this country in the interest of honest elections, and that when a name is under any designation on a ticket that has not been placed there in accordance with law, whether any individual erred by mistake, or whether actual fraud was perpetrated, so far as the individual official is concerned that name there is a fraud upon the American electorate, and that space ought to be treated as if it were void; for what ought not to be there must, in law, be said not to be there.

Now, in this case I do not intend to discuss anything but the law of the case, and yet as I read this record I am reminded that here is another one of those patented or trade-mark specimen cases that furnish the ground for the discontent of honest Americans with the manner in which our elections are conducted. There is a trade-mark in this case that is wonderfully familiar to me. This struggle of faction and men contending one against another in a district and State about the power

of sharp political practices, it is familiar to me. It begins in every instance with the effort to secure the committee. That is where every scramble, where every disgraceful scramble, where every unlawful scramble begins to secure party power. It begins with this fellow and that fellow and this faction and that faction to get the committee. Get it honestly if you can, but get it. I sat once in St. Louis for a whole week, day and night, with not over three hours sleep in the twenty-four hours, listening to 168 contested election cases, an election for delegates presenting the same features with the same trade-mark, and I guarantee that 50 per cent of these 168 cases had their inception in the disgraceful struggle of contending factions to secure a county or district or State committee. First, that is where the trouble begins.

Now, the law of Kentucky has provided the manner in which names shall go upon the ballot. No man has a right to vote a name printed on a ballot unless it is there in accordance with the provisions of the law. He may go and write his name on a ballot showing his individual expressions of opinion and his choice, but he has no right to vote for any name that has crept on there in anyway except in accordance with the provisions of the law. And if he has lost any privilege—although I do not think he has—if he lost any privilege at any one election, it is more than compensated for by the fact that the body politic is protected, and that after it becomes known, and is decided, that men must actually, honestly, and fairly comply with the law before they can get on tickets of any party, that the benefit to the individual electorate will be more than compensated by the fact that he has only lost his right once, and thereafter when the courts have decided the manner in which names shall go on a ballot, he will be safe to go into his booth and vote under the designation of his party. There may be some things in every election law that are purely directory. I would not quarrel with those courts who have said that a time limitation should be made within which some act should be done, merely directory. That is often the case, and properly the case. But what I insist upon is that the mandate of the Kentucky law which prescribes the manner in which things shall be done, the powers who shall institute proceedings, go to the very gist of the whole Australian ballot question, and must be complied with, in order to get a name on a ballot so that it can be lawfully voted.

After we started out in this case, at the very inception, of course the gentlemen upon the other side, neither Mr. Hunter nor Mr. Edwards nor his attorneys go back of the time when the convention was assembled at Middlesboro, and neither one of them is in a position to discredit the inception of the proceedings that led up to that convention. But we are. The law provides that if a nomination is to be made by a convention, if a man is to go upon a ticket through the certification of the officials of a party convention, that the convention must be called by the governing authority, the governing political authority of his party in the county, in the district, or the State. Now, what do we find; how was that convention called? The supreme court of the State, whose opinion I have cited in my brief, has declared, and you would have no hesitation in reaching the same conclusion if the supreme court had not passed upon that question, that the district committee is the governing political authority of each Congressional district.

The party rules provide as to how that committee shall be selected; it fixes who shall be its chairman, and it provides that the county chairman of each county in the district shall be a member of that body. I proceed then to ask who is it that can call a convention? A party may not desire to call a convention. The governing authority of the party may not desire to put a candidate in the field, and if it does not no man can say that that refusal of party machinery, or of those in power in the party is working any fraud upon the voter. If a party does not wish to put a name on a ticket it has a right to decline, and that must be determined by the will and the wish of the governing political authority in the district. You can find it out no other way.

Mr. MILLER. Will you let me suggest that Mr. Olmsted, the chairman, has just come in, and I want him to get the drift of your argument. I simply want to state in brief to him that you take the position that on account of the revolutionizing of the franchise system in this country that the decisions that have been heretofore rendered under the old system of voting and holding conventions do not have any weight or force in reference to the Australian ballot system. I want him to get the drift of your argument as you go on.

The CHAIRMAN. As I get your last remark, your thought is that it is the governing authority of the district that controls the placing of the name on the ballot?

Senator THURSTON. There is no doubt about it; I think we all agree to that.

The CHAIRMAN. No; the State committee.

Senator THURSTON. No one claims here, as far as I have listened to the argument, that the State committee has any authority in the matter of calling party conventions. The initial proceeding must be by the governing authority of the district.

Mr. WEEMS. That is the calling of the convention?

Senator THURSTON. Yes; the calling of a primary, or a convention.

Mr. WEEMS. Will you let me ask you a question? The statutes presupposes the existence of some governing body to first determine these disputed contests. Suppose the State organization provides for no governing body? Of course the secretary of state would have to determine it some other way. Suppose the rules of a State organization make the governing body for the determination of contests, party contests, but not as to disputed nominations? Their rules give the district committee no power to decide disputed nominations, but merely disputed elections of committeemen in the precincts and things of that kind relating to party organization purely. Do you think, then, that the district committee would be a governing party within the meaning of that statute?

Senator THURSTON. I do not think it is necessary to go into the consideration of what might be held in a case like that, because it is conceded here, and it is held in so many words by the supreme court of the State, that the governing power in a Congressional district is within the Congressional committee, and you can take it for granted that there is none other. It is either a governing authority or it is not.

Mr. WEEMS. Frequently there is none other. In my State the party rules provide absolutely no way to determine the contest, and the courts pass upon them.

Senator THURSTON. I am not reaching the point of contest yet. I am just chopping at the roots out of which this convention grew.

Mr. SULLIVAN. Senator, am I right in supposing that if you fail to show your first point, that the delegates were illegally called, and so there was no convention and no nomination, that you can not expect to prevail at all in the case?

Senator THURSTON. No; I will go a little further. I am going to try to establish the point that there was never any convention legally held that made nominations. On those two contentions our case will rest.

Mr. SULLIVAN. If you fail to establish the point that the convention was illegally called, you expect to show that after the convention was illegally called, that it failed to make a legal nomination?

Senator THURSTON. That really covers the whole ground of our case.

Mr. TALBOTT. That the secretary of state had no right under the law to put either of these gentlemen on the ticket?

Senator THURSTON. To put either of them on. I have cited in my brief, and I do not care to read it over here, the decisions of the courts showing that all substantial provisions of these Australian ballot laws are mandatory, and that compliance with them is necessary in order to get names upon the ticket at all. There are two things in that connection: First, the courts say that we have adopted the Australian ballot from another country and that the common rule must prevail that where we have adopted from another body politic a legislative provision we take it necessarily subject to the construction which had been placed upon it by the home courts. And then I also make the suggestion that in so far as the determination of what the law of Kentucky is; in so far as that law has been construed—and we show you in our brief where it has been construed by the highest courts in the State of Kentucky—that under the well-known doctrine which the Supreme Court of the United States will never interfere with, that law of the State construed by its highest judicial tribunal means what that tribunal says, and nobody can deny it in any other jurisdiction, in any other place before any other court.

Now, it may be said that it did not matter who called a district convention. It may be said that as far as the electors were concerned it would have been just the same if the chairman of that district committee had called the convention, or the secretary of that committee had called the convention, or four members signing their names had issued the call for that convention. But that is not the law; and there is a wise purpose in the law in requiring that the governing body, as a body, shall make that call, because it is not for one man, it is not for the chairman, it is not for the secretary, it is not for the minority of that governing body to say, first, whether a call shall be made or not; second, when; third, where; fourth, how made up, how many delegates, chosen in what way. All these things must be determined, gentlemen, before a call can go out, and they are important. They are important not only to the party organization, but they are important to every member of the party, because the wisdom and the judgment of the governing authority of the district must be exercised in determining all these things. When, where shall the convention be called, how many delegates, how apportioned, how selected? They are more important than we stop to think about at first, and you, gentlemen, have had experience in these matters, you have witnessed these things.

As I said before the chairman came in, the first step that factions and candidates take when they resort to doubtful political methods is to go after the initial committee. Now, I go a step further. I say that the proxy system in State or other conventions or in committee has been the greatest disturber of political honesty and integrity of anything else in this country. There was a time, and I do not think we have to go very far back for it, when it was the rule in probably every State in this Union that a delegate to a State convention could give his proxy and his proxy could vote; that every delegate to any convention could give his proxy and his proxy could vote, and that a member of any committee could give his proxy and his proxy could vote. It was the accepted party doctrine, but it led to most tremendous evils, for in every case where there was a conflict or difference in the State or district the first raid was made on the delegate or the committeeman to get his proxy, and it was always considered that the man who could get the most proxies and secured the organization had placed himself in the most favorable condition in the contest.

Why, proxies have been secured in all parts of this country when they were allowed under party law and constitutional law. They have been procured by the most disreputable methods, and sometimes—well, almost always—it was impossible to prove it, and districts and States have been scoured by political henchmen to secure proxies; and proxies were among the most crying party evils of all the evils that surround and beset our party and our election system.

The CHAIRMAN. It is now 12 o'clock. How much further time will you require?

Senator THURSTON. I do not intend to be unnecessarily long in my contention. As I said a little while ago, I have only two legal propositions to branch out upon.

Thereupon, at 12 o'clock noon, the committee adjourned to meet at 10 o'clock to-morrow morning, Friday, January 13, 1905.

WASHINGTON, D. C., *January 13, 1905.*

The committee met at 10 o'clock a. m., the Hon. Marlin E. Olmsted, chairman, presiding.

ARGUMENT OF HON. JOHN M. THURSTON, OF COUNSEL FOR JOHN C. WHITE, ONE OF THE CONTESTANTS.

The CHAIRMAN. Senator Thurston, I believe you have the floor now.

Mr. THURSTON. Mr. Chairman and gentlemen of the committee, I am well aware that some of the propositions for which I contend may seem to run somewhat counter to the old line of decisions rendered prior to the change in our whole ballot system; but I am profoundly convinced that a careful study of the reasons underlying all those old decisions, applied to the new condition of things produced by the enactment of these remedial statutes, will satisfy you that the propositions I insist upon follow necessarily and inevitably the new conditions created under the Australian ballot laws.

Gentlemen, we have been working out a great reform, a great revolution in election matters—a revolution born out of the quickened conscience of the American body politic. Laws enacted by the legislatures of our several States to prevent frauds, to surround the ballot box and political machinery with safeguards, must either be enforced or they amount to nothing. If we can disregard, if courts can disregard any of what appear to be the substantial provisions of our new legislation, then we are back on the old danger ground from which the legislatures of our States have attempted to advance us.

Some great constitutional lawyer,—I think perhaps he may have been Von Holst, although I do not now remember—has said that a law without a sanction is no law at all, meaning by the word “sanction” the power, the virility behind it, to enforce its provisions. A law that can be evaded, a law that does not produce results intended, a law that does not prevent the evils that it apparently intends to prevent, is no more of a law than an eunuch is a man. It has the name, but it lacks that essential element of all law—that is, the power behind it to enforce its provision.

Now, it may be suggested in this case that it matters but little as to how a political convention is called or convened. It may suggest itself to the mind of a man who has not thought deeply on the question that if in fact a political convention is assembled, and its act is certified to the secretary of state, and the names presented by it as party candidates are placed upon the ticket it matters nothing as to how the convention was called, or as to who called it, or what took place before it assembled.

But, as I attempted to illustrate on yesterday, everything may depend upon the character of that call, upon the composition of the body which issued it, and, in fact, as I said before, I think you can trace nine-tenths of the disorder of our electoral system, of our ballot system, to sharp practices which precede the organization of political conventions.

Prior to the enactment of the new legislation in the several States any body of men—any one man, indeed—could have presented to the electors at the polling places a ticket with the party heading containing the name which the body presenting it or which the individual presenting it may have selected of their own or of his own volition to go upon it. Under the old system it necessarily resulted that where anybody could present tickets with any names upon them, headed by a party title, there was no way for a court to determine the will or the wish of an individual voter, except to say that the name upon the ticket which the voter put in the ballot box represented his desire. The new legislation, however, has thrown around political methods decided and drastic limitations. There can now be presented to the voter but one list of any party's nominations. It is no longer possible for two political conventions to be held in the same district and to get both lists of names upon the ticket. It is no longer possible for anybody short of the duly constituted assembled representatives of a party, legally assembled, to place before the electors a ticket of its selection.

These restrictions have undoubtedly been deemed by our legislators as necessary. To disregard them is to disregard the law, to annul all the benefits that are expected to flow from these new laws, and to put us back where we were before.

In the case before the committee, I go back to the original intention of the call. Will you please let me see that little book of rules, Mr. Weems.

Mr. WEEMS. Certainly [handing same].

Mr. THURSTON. These rules, the rules of the Republican party of Kentucky, provide in section 16: "Each member of the State central committee shall also serve as the chairman of the Congressional district committee of the district from which he was chosen, which Congressional committee shall be composed of the chairman of each county committee in said district," except in one particular district, in respect to which I do need to read. Then "It shall be the duty of each district committee to provide for the nomination of a Congressional candidate at least thirty days prior to each Congressional election."

There was a duty devolving by operation of law, for these party regulations have the full force and effect of law. Under the ballot statutes of Kentucky they are made a part of the legislation and given as much force as any provision of the law enacted by the legislature.

Under this provision of law, then, as I term it, there was only one body on the face of the earth that had the right to initiate action looking to the nomination of a Congressional candidate in that district. No one man, no set of men, however brought together or however constituted, could have initiated the nomination of a candidate for the Republican party in that district.

Now, this law and these regulations mean something or they mean nothing. It is a general rule, of universal acceptance in court, that where a specific duty is imposed on a body of men nobody on earth less than a majority of that body of men can perform that duty. Until a majority of that body is assembled there is no body. The action of less than a quorum is no action at all, and they are simply individuals, and what they do is the act of men, and not of a constituted body or authority. Under every decision that has ever been rendered by a court, a body of men constituted for the carrying out of any public purpose can only act by a majority of that body, in the absence of some specific provision making less than a majority of the entire membership a quorum capable of transacting business. Under some statutes and under some rules of party organization, it is true, it is provided in some instances that less than a majority of a body thus constituted for action may constitute a quorum and transact business. But, gentlemen, under these provisions less than a majority of this district committee could sit at this table until doomsday and never until a majority of its members appeared at this table would that body be assembled or have any right to do anything.

Then I go a little further and insist that there is no provision under any general law and no provision under any rule of the Republican party in Kentucky whereby any man not a member of that committee can sit with that committee and act as a member of that committee. I insist that there is no authority granted any member of that committee to transfer his right, his official right as a member of that committee, to any other individual; and no power given under any law or rule of the Republican party in

Kentucky permits any outsider designated by any member of that committee to fill that member's place upon that board.

There is reason for this. Going back to the reason we find that a large part of all political trickery and political chicanery and all political frauds has crept into our system through the recognition or allowance of a proxy system. So grave had this abuse become in years gone by that gradually one after another of the organizations in almost every State, and I think, indeed, every State in the Union, provided that no member elected to a convention would be allowed to give a proxy, and that no proxy should be allowed to take the place of any member elected to a convention, and gradually, as the necessity of the rule grew, political parties, in the interest of honesty and fair dealing and right, commenced to eliminate from every organization in the party, convention and committee, the right of proxy representation.

Now, gentlemen, in the State of Kentucky I insist that, under the rules of the Republican party, they have eliminated proxy representation from every political body in that State except the State central committee. There may have been reasons, and possibly good ones, why the party organization provided for proxy representation in their State central committee. But I refer you to their rules, and there is not a line, there is not a word from beginning to end which, by intendment or otherwise, authorizes the representation of any man in any convention or in any committee by proxy or otherwise, except in the State central committee. There it is provided that a committee, consisting of 13, may act through a quorum represented by a proxy or other person.

Mr. SULLIVAN. I understand, Senator, there is no prohibition on proxy voting?

Mr. THURSTON. No; there is no prohibition on proxy voting, except as to conventions. They have specifically provided that as to all conventions proxy voting shall not be permitted.

Mr. SULLIVAN. Then, Senator, how do you account for the failure to apply that directly to other occasions?

Mr. THURSTON. Take the line of committee organization. The fact that by express provision, by express permission, one committee is authorized to act under the proxy system, by the familiar construction of general laws, that implies that it was the intention of the State committee of the State of Kentucky to refuse the proxy system to every other political committee organization in the State.

But we are not left in any doubt upon this subject. The supreme judicial tribunal of Kentucky has passed upon this case. It has construed the law and it has construed the rules and regulations of the Republican party of that State on this question of proxy representation in a committee and in a Congressional committee.

I will not take time to read all that the court said on this subject, and I wish to be fair with this committee in stating in the first instance that the court of appeals in the State of Kentucky, in construing this law and these rules of the Republican party, had before it a case growing out of a primary election in the State.

Mr. WEEMS. Senator, was it not in this district?

Mr. THURSTON. In this district, yes; but the rules of law laid down by the supreme court, as applied to the right and power of a Congressional committee, are general and universal in their application; and that court of last resort declares that in placing a judicial

construction both upon the law and on the party rules, the law does not authorize proxy representation, and that there are no rules of the Republican party in the State which authorize proxy representation. And that court denies, in the broadest possible way, that proxy representation on a Congressional committee is lawful.

In another case which has direct bearing on the same line a question was raised on a committee of four.

Mr. CURRIER. Is this a Kentucky case, too?

Mr. THURSTON. Yes; a Kentucky case cited in the brief. A contention arose that a committee of four, of which one member was by proxy, had no right to act or call a convention. The court decided that inasmuch as there was a majority and quorum of the committee, without counting the proxy, the majority of the committee, or a quorum of the committee, the regular members, had a right to act, and that the mere fact that sitting with them, sitting with a quorum, with a majority, was a proxy, did not vitiate the action of the majority; thus clearly indicating that the judgment of the court would have been, if less than a majority of that committee had been there in person, that the majority or quorum resulting from the counting of proxies as members of the quorum would not have authorized the committee to act at all. There are very good reasons for enforcing a doctrine of this kind.

As I said on yesterday, almost everything in the way of factional difference, of individual rivalry, of political sharp practice or fraud in election is initiated in the bringing together of the committees which originate party proceedings.

It is illustrated somewhat in this case, gentlemen. When the committee was called together in that Congressional district, if you read this record aright, there was a wild race throughout that district to secure members of that committee and have them present at the meeting of the committee. There was a wild race between the two candidates to secure representation on that committee by the presence of individual members and by the use of proxies of a majority of friends of the one man or of the other: and as I look at this record, I judge that the question as to each man, as to which leading candidate had the majority of that committee present at that meeting, was, "Which man controlled the majority of the votes of that committee there assembled." I find he was the man who would dictate first the place where the convention would be called—a most important advantage to the one candidate or the other, as this record discloses. For it is alleged all through this record that the town of Middlesboro, with its people and its surroundings, was a favorite place for the assembling of a convention for the nomination of Doctor Hunter, and that the town of London would be a favorable place for the assembling of a convention for the nomination of Mr. Edwards. So it was not a trivial matter as to which contending candidate secured a majority of that committee, thereby dictating the terms and conditions of the call to be made.

It was indeed a serious matter. It was a matter which, in my judgment, led up to this split in the party, which is a disgrace to the State of Kentucky, and which has embroiled honest electors in that district and bred factional separation inimical to the best interests of the Republican party and to the interests of the several communities in that district.

Another thing, the time when the convention is to be called may be a matter of very serious moment. The apportionment of delegates may be still another very serious matter, in which individual or factional advantage in the committee may control. And the method of holding county conventions for the selection of delegates to the district convention may be a matter of most serious moment to the party in the district, to the electors themselves, and certainly to the respective candidates seeking nomination.

And, still another thing, that political committee, the party authority in that district as decided by the court of appeals of Kentucky, had a right to determine as to whether the call should be issued for the convention or not. They were too late under the law. There was not sufficient time under the law to call a primary election. It may in that district, or it might in any other, be a serious question whether it was important or desirable to call a political convention in the district, for a failure to call a political convention is not necessarily the end of a party's opportunity to place its ticket upon the official ballot. Beyond that lies the right of the electors of a party to nominate a party candidate by petition.

So all these were serious questions. They were questions which might have great effect on the result of the party contests, which were liable to embroil the Republican electors of that district in a feud among themselves, disastrous to all that is best; and, as I say, it is a matter of power and original control, a matter of the grasp of machinery recognized as so important by both of the principal contending candidates. They used, as this record shows, extraordinary efforts to get a representation of the committeemen there, and each man was doing his best to get just as many proxies in favor of his kind of fellows as he could. And I think it reasonably appears that when this committee assembled, counting in the proxies, Doctor Hunter had conducted a most successful hunt. He had got the most proxies. Mr. Edwards's friends had some, but Hunter had been a little earlier, perhaps, in the field, or in the woods, I might say, and he had the most, and they controlled and dictated the action of that so-called committee. They had the representation provided in the way they wished. They called for a delegate mass convention in these several counties, which, as the record shows, led to contests in five or six of them.

Mr. WEEMS. Senator, let me ask you, Was there less than a quorum there?

Mr. THURSTON. Yes; I am getting to that point in a minute. They took that convention to Middlesboro, to the heart of the Hunter strength. On that committee—how many members were there in that committee? [Addressing Judge Alcorn.]

Judge ALCORN. Eighteen; or I should say 19.

Mr. THURSTON. Yes, 19; on that committee a membership of 19; only 8 original real members of the committee met, and there were 11 proxies, some of them more or less questionable, but recognized by the members and proxies that assembled at that committee meeting.

Now, gentlemen, I insist that under the law of this case, under the general rule of the power of a body organized to perform a duty—I insist, gentlemen, that that committee never met. It could not meet. It was never a committee until at least 10 members were assembled around the council table. It never had a quorum. It was a failure

on the part of the party in that district to initiate a party nomination through delegates to the Congressional convention.

If you disregard the provisions of the law in reference to this, you are cutting at the root of the tree of electoral reform. You are striking at the very strength of the Australian ballot system. You are setting at naught and disregarding the provisions of the legislature of the State of Kentucky. You are relegating political action to the same field from which modern legislation has attempted to rescue and remove it.

The convention was called by a body that, as the law, as I stated it, declares, was not a Congressional committee. However, that supposed convention was called and it assembled, and from this time on I shall discuss the proposition that neither at Middlesboro nor at London, from this testimony, was there ever a convention of the party that nominated a candidate of the party. The convention, I say, assembled, and there were in that convention, some say—it is viewed in two lights—five contesting delegations. Contesting delegations from another county are said to have both been for Hunter. But there were at least five delegations contesting, consisting of 92 members out of a total membership of 360—

Mr. SULLIVAN. Out of 346.

Mr. THURSTON. Yes, out of 346. That convention assembled, proceeded to a temporary organization, appointed committees on credentials, and probably other proper committees, and then a series of events followed which, in my judgment, resulted in the breaking up of that convention, in the dispersing of its members—not “disbursing” of its members, as the intelligent printer has unfortunately made me state, although there may have been something in that also. [Laughter.] It resulted in the dispersing of its members and in the failure of the Republicans of that district to place a Congressional candidate in the field.

Passing by, now, all questions which preceded the gathering of that convention, it is said that affairs got somewhat boisterous in that convention. I am not here to reflect upon either of the contestants in the case, and I am not here to criticise, except as the records warrant, the political methods which both sides in that convention were straining themselves to the utmost to take advantage of to secure a nomination, as against each other. My judgment is, from reading this record, that the nominee of one of these conventions ought to have gone on the official ballot under the heading of a gun and the other ought to have gone on under the heading of a bottle. [Laughter.] Both of these utensils or weapons of offense and defense are well known in the old Blue Grass State. It is insisted that that temporary organization had a right to adjourn to another city and to proceed there with its deliberations. It is insisted that there were conditions in the convention hall which rendered such action necessary for the safety of the delegates there assembled. [Laughter.]

Now, gentlemen, that is a reflection, an absolute reflection upon the Kentucky character. I do not believe it is true that any Kentucky delegate ever thought there was necessity of his getting out of any place where he was assembled with his fellow-Republicans on account of any gun play that might be threatened there. A Kentuckian is neither afraid of a gun nor of a bottle. [Laugh-

ter.] It is all nonsense and all child's play to talk of the idea that that convention was compelled to leave the town of Middleboro and compelled to leave that hall on account of danger!

The CHAIRMAN. You think they were not afraid of being shot by one and half shot by the other? [Laughter.]

Mr. THURSTON. Neither; neither; it was merely a pretense. From the time that convention assembled there was a conflict, intense, bitter, to secure an advantage in favor of one or the other of the principal candidates before the convention. It appears that the temporary chairman of that convention, in determining who had the right to vote in the temporary organization, decided that those delegations whose certificates were viséed or indorsed by the members of the district committees from their respective counties were entitled to participate in the temporary organization—a ruling in direct violation of the law of the party.

I do not know, and this committee can not know, whether the delegations whose right to participate in the temporary organization, as fixed by the rules of the Republican party, were allowed to participate in that preliminary organization or not. There is no testimony in this case to show whether or not any regular and lawful delegation, whose seats were contested, was the delegation that participated in that preliminary organization, and you may make whatever inference you please. You may believe that the chairman of that convention, nominated by the opponents to Mr. Hunter, nominated by the friends of Mr. Edwards, determined to recognize those delegations which held certificates indorsed by the respective committeemen from their counties because those delegations represented the wishes of those in harmony with them.

The CHAIRMAN. Senator, if you will excuse me a minute, one serious question with me is whether there is not some period where the transaction is ended by the verdict of the jury—a question of whether we ought to go back into all these details of party nominations. I wanted to ask you a question to get your view of it. Suppose, for instance, that Doctor Swallow, the Prohibitionist candidate for President, should contest the election of Mr. Roosevelt, and should contend that there were delegates in the Republican convention who had no authority to be there, and that the rulings of the convention in unseating certain delegations and seating others were illegal. Where would there be any end—

Mr. THURSTON. Mr. Chairman, I am not going back to that. I will tell you what I am leading up to, and then you will see that your question does not apply to this proposition. I am leading up to the proposition that that convention as assembled had no right to adjourn sine die or meet at any other place. They could only perform the advance duties required under the call—that is, to organize a permanent convention, to determine what delegates were entitled to sit therein, and to turn over the future business of the convention to the permanent organization.

Mr. TALBOTT. Suppose, Senator, after these two conventions had acted, Doctor Hunter had declined to become a candidate. Suppose he declined after the convention had acted and his name had been put on the ballot. Would not Mr. Edwards have been the nominee of the Republican party?

Mr. THURSTON. I think not, unless he had been nominated in

accordance with the election laws of the State of Kentucky and the rules of the Republican party. I do not mean to say that it would ever be proper to go behind and attempt to reverse a vote in a convention as to the seating of delegates or to decide anew which delegates were duly chosen to that convention. The convention, I admit, has the right to determine that question. I admit that; but here is a case where at least 92 delegates were contesting each other in that convention. It reasonably appears that both sets of delegates in these five counties, having 92 delegates in the convention, apparently had regular certificates from the county convention, signed by the chairman and the secretary, so that neither set of contesting delegates from any one county appears, on the face of the certificate presented by them, to have any superior right, the one over the other.

The party law, however, provided that that set of delegates which brought to the Congressional convention a certificate signed by the chairman and secretary of that county convention, called to order by the county chairman of that county, should be seated *prima facie*. But the temporary chairman decided that the set of delegates bringing their credentials indorsed or viséed by the Congressional committeeman from that county should be admitted and their credentials accepted as entitling that delegation to *prima facie* rights upon the floor of the convention.

That may have have recognized the right delegations or it may not. My point is this, that until that convention had determined what its membership was and what delegates had, the right on that floor it had no jurisdiction to do anything except to proceed and determine that question of the right of the contesting delegates, and then proceed to a permanent organization, and to proceed to it under the call. I insist that the call for the convention fixes the rights and powers of a temporary organization.

Now, stop and look at it. You do not know, and I do not know, whether a majority of the legally elected delegates to that convention, who had the right to seats therein, ever voted to adjourn to London. Every one of these 92 delegates who were recognized in the temporary organization may have been delegates who were not entitled to sit therein; and if so, it is presumable that 92 votes of delegates temporarily on the floor, temporarily recognized, cast their votes for that adjournment, whereas if their contestants, the real delegates, had had an opportunity to vote the vote would have been 92 off and 92 on. It goes to this proposition, that a preliminary organization can only proceed to act in pursuance of the call up to the time when the real membership of the convention is ascertained and the real organization is perfected.

My friend Judge Alcorn made an admission here yesterday which is absolutely in line with this proposition. I have been studying this question seriously, and I come to the conclusion that a temporary organization can not adjourn *sine die*. I therefore agree to Judge Alcorn's proposition. I was surprised to hear him make it, because if a temporary organization has a right to proceed in any way or at any place not provided for in the call, then it has the right to exercise every other power of a convention lawfully organized and proceeding in the transaction of its business. You can not draw a line of demarcation between any act of a temporary organization unless you concede, and you must concede, that a temporary organization has

all the powers of a convention; that it can put an end to its sessions and refuse to proceed, and permit the regular organization to be brought forth, and to act—

Mr. MILLER. Let me ask you, Senator, what is your opinion as to the power of a temporary organization to adjourn sine die? And in addition to that, let me ask you another question, so that you can answer them both together: If they do not have the power and yet adjourn, what becomes of the convention, if this assembling there did not constitute a majority of the legal delegates?

Mr. THURSTON. I will get to that in a minute.

Mr. MILLER. All right.

Mr. THURSTON. My proposition, so far as it goes, is that a convention, until it is a convention, until every true delegate having a right to sit there has a right to vote, can do nothing except to proceed to the organization of the real convention, the permanent convention, in the manner designated by the central committee. The committee designates the time. They designate the place where this temporary organization shall assemble and proceed to a permanent organization.

Now, gentlemen, it may or it may not be true that delegates were voting in that temporary organization who had no right to vote in the permanent organization—men who were not delegates to that convention, men who were usurping the places of delegates rightfully elected and rightfully entitled to sit, and you must go to the extent of saying that a body of men, which, as determined afterwards, may not be the body of men constituting the real convention, can adjourn that convention sine die or can take it to another place outside the place provided for in the call against the will and wishes of the real delegates, who, if they had their real rights on that floor, would have carried the question the other way, because if you say a majority of 100 in that convention can adjourn to another place, you must also say that a majority of 1 can do it, and you thereby place it in the power of the men or of the faction temporarily securing or enjoying the advantage of the temporary organization to defeat the real will and the real wish and purpose of the actual majority of the delegates who come to that convention, and who alone have the right to exercise the authority and the right to seats therein.

I do not think that any political activity or sharp practice can be charged as to either of these contestants—Hunter or Edwards—against the other. They were both struggling for advantage. Mr. Edwards's people tried to get that convention called at London, in his bailiwick. Mr. Hunter got it called at the other place. Mr. Edwards at the convention was trying to get that convention adjourned to his bailiwick, and thereby defeat the decision in respect to the place where that convention might be called, which had been made by the district central committee. The idea that that convention adjourned through fear of what might result at Middlesboro, in the light of this testimony, is a mere subterfuge. It was a struggle for political advantage. Mr. Edwards thought he would have it at London. Doctor Hunter believed he had it at Middlesboro.

I have read the decision presented here by General Dudley on the question of the power of the temporary organization in a convention to adjourn to another place. That decision is not on all fours, so far as the facts are concerned, with the situation presented in this case, but I believe the underlying principle of it is the same. I

believe you can not stop—when you say that a temporary organization can adjourn a convention to another place—I believe you can not stop at that and deny the right of that same body of men, presided over by the official who is entitled to call them to order, to also adjourn to another place. And if that temporary organization had the right to adjourn through the votes of men who might or might not be entitled to seats in the real convention, then it had the right to adjourn while it was still under the chairmanship and direction of the official who called it to order. Why, gentlemen, there is no distinction in point of law or in point of fact between a temporary organization while it remains under the chairmanship of the chairman of that committee which called it to order, or while it continues under the chairmanship of a temporary man put in his place to conduct the preliminary proceedings of the convention.

I remember very well the Republican national convention of 1884, held at Chicago, where Senator Sabin, of Minnesota, chairman of the national committee, remained in the chair of that convention and presided over its deliberation for a whole livelong day. He had to do it because a contest arose over the election of a temporary chairman, and until that contest was settled the man who called that convention together was the chairman of the people assembled there, as was also the chairman who succeeded him in the temporary organization. They were both there for one common purpose and for none other, and that was to guide and direct that body of men assembled there to the performance of the only duty devolving upon them under the party call, and that was to proceed and effect the permanent organization.

MR. TALBOTT. Has a committeeman any right to participate in the deliberation of the body unless he is a member of the convention? In this case, as I understand it, a temporary chairman had been elected.

MR. THURSTON. A temporary chairman had been elected; yes. But what I am endeavoring to impress upon the committee is that the law, the judgment, the decision of the court which General Dudley cited here, to the effect that a convention temporarily organized and proceeding under the chairmanship of the party official entitled to call it to order was no more a convention and no less a convention than the assemblage which remains during all its temporary organization, when another temporary chairman had taken the place of the official who called it to order. And, therefore, I think that decision he has cited is in point. I know of no other decision on that precise question. I have been unable to find any. The committee must determine that question out of its own good legal judgment, out of its sense of what is fit and proper. And, gentlemen, what trouble and turmoil might be occasioned in a political convention such as that was if we adopt any other rule.

Trouble and turmoil was actually occasioned in that convention, as it there assembled, by the efforts of the men having temporarily a majority of the votes in that convention to secure factional advantage. There is nothing to show, on the face of this record, that any particular side in that convention would have had a majority of the regular delegates when their credentials were passed upon and they were seated. If you permit the power to exist in

the temporary organization to take that convention away from the locality where the committee has called it to another place, when that action may be against the will and the wish of the real members of that convention, when the real membership is ascertained——

Mr. CURRIER. Suppose, Senator, there was no contest. Would you then admit the power to adjourn?

Mr. THURSTON. No; I would not. I do not believe it exists. I do not believe, in the very nature of things, that it exists; and the fact that no harm might come from it in certain particular instances or the fact that the same men who are members of the temporary organization are the men who will become members of the permanent convention, does not affect the proposition. I insist that the only power there is in a temporary organization in convention is to proceed to effectuate a permanent organization in accordance with the terms of the call; and they are limited to the terms of the call, and the call fixes the place. They have got to proceed with that preliminary organization there, and they can not go anywhere else.

I will go further. I insist that a temporary organization can not adjourn. What they call adjournments are mere recesses. They do not rise to the dignity of real adjournments. An adjournment from time to time and from day to day is not a real adjournment. It is merely a recess, an intermission. The organization continues in existence and must continue. But the abandonment of it by a majority of the men assembled there, the violation of party duty by the abandonment of that preliminary organization, can end the convention and prevent a nomination.

The district committee has fixed the place where the convention must be held. No body of men, in my judgment, until that convention becomes a convention and a law unto itself, can act except in accordance with that call, or at any other place than that fixed in the call.

Mr. TALBOTT. Could this contest have been made in the State of Kentucky and under their laws, prior to the election, and the question decided whether or not either of these gentlemen ought to go on the ballot?

Mr. THURSTON. Well, I have some views on that, but I do not know that it becomes necessary for me to express them. It may, but I do not want to discuss the case of either one of these other contestants, although I have some views about that.

The CHAIRMAN. Could not Mr. White have gone into court?

Mr. TALBOTT. That is what I mean.

The CHAIRMAN. And restrain them from putting either of these names on the ballot if they were not entitled to be there?

Mr. THURSTON. It is possible that that might have been done, and yet it was not necessary for him to do it in order to protect his rights. Mr. White, clear up to the time that those ballots were presented at the polling places, had the right to presume that no ballot would be used officially except in accordance with the law. He had the right to presume that, clear up to the time that the ballots appeared at the polling places. If in law there had been no party nominations, he had the right to presume that no party ticket would appear on that ballot when it was officially presented for use in the polling places.

Mr. SULLIVAN. It would have been better if the highest court of Kentucky had decided that question for this committee.

Mr. THURSTON. The highest court of Kentucky had no chance. With all the struggle and with the quick action of the other rival contestants appealing to the courts, nothing was accomplished, and it was quite evident that no real decision could have been reached in the short time remaining between the holding of that convention and the election, through the operation of the court in Kentucky.

You gentlemen heard General Dudley read the decision of the Colorado court in reference to the power of the temporary organization. I think that ought to be the law, for it is a dangerous thing, gentlemen, to permit a temporary organization to defeat the call of the committee that brought the convention to order.

Mr. SULLIVAN. Do you carry it so far as to say that no physical necessity could arise that would justify the adjournment of a temporary convention?

Mr. THURSTON. Oh, not at all; take a recess. Let them take it to another place in the immediate vicinity. I have no question about that.

Mr. SULLIVAN. Suppose the building burned down?

Mr. THURSTON. They could assemble on the ground.

Mr. SULLIVAN. Suppose they wanted to sit indoors?

Mr. THURSTON. Then, they could go to another place.

Mr. SULLIVAN. Suppose there was no proper building in that town?

Mr. THURSTON. I do not think they could go to another town.

Mr. SULLIVAN. Suppose the weather was so inclement that they could not assemble on the green and there was no other building in that town. What then?

Mr. TALBOTT. Suppose there was an epidemic in the town.

Mr. THURSTON. They would do the best they could, and it is quite possible that under certain circumstances the assemblage of that convention at a point close by would be valid.

Mr. MILLER. What difference does it make whether they went 1 mile or 10 miles or 15 miles?

Mr. THURSTON. Here is another proposition. If a convention, with all its members and through the unanimous action and acquiescence of everybody, the delegates participating in the temporary organization and those who might be entitled to take their places in the permanent organization—of course, if unanimous action was taken in that way, and there was no question about the convention assembling somewhere else, it might be done. The question might not be raised.

Mr. SULLIVAN. Why could not the majority raise the question?

Mr. THURSTON. Because that majority of the temporary convention may or may not represent the majority of the real convention. They may be unseated. In this case 92 men who voted for that adjournment might have been turned out of that convention because they had no right to seats there, and 92 other men who did not then have seats might have been put in their places.

Mr. CURRIER. You have already said you would apply exactly the same rule if there was not a contest in the convention.

Mr. THURSTON. I think as a rule of law; yes.

Mr. TALBOTT. But these other delegates were all in favor of meeting at the other place, and if they were not entitled to seats the same contest could have been made against them.

MR. THURSTON. Yes; but they had not been summoned to appear at any place else with their contests, and the men who were wrongfully in their places could not summon them to go to any other place. They were there under call.

This is a new question, gentlemen. It is almost wholly new, and yet I believe it is one that furnishes a very dangerous precedent, if you establish the right of a temporary organization to take a convention away from the town where the State central committee or district committee has located it—if you take it to another point than the point where the committee had convened it.

MR. SULLIVAN. I did not quite finish the inquiry I was making. You admit that under such circumstances as I mentioned, namely, the destruction of the building by fire, and the hostility of the weather that would prevent your assembling in the open air, and the fact that there was no building in the town that would hold the convention, that a convention under temporary organization would have the right to adjourn to another town?

MR. THURSTON. I think, as far as one could go on the ground of absolute necessity, would be that they must convene at the nearest convenient point; or if that power exists, it would only arise out of a condition that practically precluded the possibility of their remaining in session in the place fixed by the committee that called them into organization.

MR. BYRD. If the district committee ordered a convention held in a place, and they can not hold it there, is it not the law that their power is exhausted, and it should be held in no other place?

MR. THURSTON. My judgment is that they would have to proceed to the place fixed by the committee that originally called the convention. I do not believe that an unorganized convention, with delegates seated there without rights, has the power to change the place of holding the convention in opposition to what would be the wish of a majority of the convention permanently organized.

MR. WEEMS. You are probably, Senator, attaching more importance to that than its importance in your own mind justifies. You do not attach great importance to that, do you?

MR. THURSTON. My judgment is, gentlemen, that that convention simply broke up. I think the whole testimony in this case will satisfy the student of it that that convention broke to pieces, and that there never was a majority, either real or pretended, of the real delegates to that convention that ever assembled at any place. The testimony here is very peculiar. [Laughter.] There is no record remaining of the proceedings of either one of those so-called conventions. There is no evidence anywhere that any particular number of men who were the original delegates to that convention ever assembled anywhere on earth after that meeting broke up.

It is true that each convention reports that it cast nearly the whole vote to which all the counties were entitled. Both conventions reported that they cast about 270 votes for the respective nominees. But, gentlemen, that they did not is self-evident. That a part of the delegates remained, after a part went to London, is self-evident. That many of them, and probably a majority of them, went home is, I think, fairly established from this testimony. Neither one of these conventions, if I read this record aright, ever attempted to proceed to determine the contests before it between contesting delegations.

They had no need. It would appear, as near as we can gather from this very vague and indefinite testimony, that a part of one set of contestants probably remained at the Hunter convention, and the other set of contestants, or part of them, went over to the London convention.

Mr. WEEMS. The roll call vote would necessitate such an inference, would it not?

Mr. THURSTON. The roll call shows that 346 delegates were present at both conventions. [Laughter.]

General DUDLEY. Not quite that. There were six counties not represented in the London convention, and three not represented in the Middlesboro convention.

Mr. THURSTON. I do not know as to that, but so far as there is any testimony about a roll call, both of those so-called "conventions" appear to have been full and complete with respect to delegates.

Mr. MILLER. I think the record shows that each of the conventions had a clear majority of the 346 ballots. Two hundred and seventy-eight votes, I think, was the number.

Mr. THURSTON. I think the record shows that; yes. But the record does not show that a real majority of the real delegates, or even of the pretended delegates to that convention, ever assembled in either of the so-called "conventions" which resulted after the split. The testimony shows, as far as human probability can determine from a careful analysis of it, that there never assembled after the so-called "adjournment" a majority of the men who went to that first convention, either as uncontested or as contested delegates. The only manner in which either of the so-called "conventions" claim a nomination is on the theory that, under the party law of Kentucky, whether there were 1 or 15 or 40 delegates remaining or appearing from any particular county, the chairman of that convention had the right to cast the vote of the whole delegation.

It does not appear in this record whether or not a chairman of any particular delegation as it stood in the original convention remained and acted, or went to Middlesboro, or went to London and acted. There is a dearth of record. There was evidently a purpose in preventing a record from being left which would show who the men were who participated in either one of those so-called resulting conventions. The testimony is that, so far as Doctor Hunter's convention is concerned, somebody called some of them back into the hall, and that there remained and participated in that so-called convention, including outsiders, from 50 to 80 or 90 men, according to the different opinions of the different witnesses—that is, of outsiders and all, there did not remain in that convention at any one time, or participated in the further proceedings, to exceed 100 men. It appears beyond question that after that convention broke up a majority of the delegates did not go back into that room.

I think it appears, likewise, that at the London convention, from the meager testimony we are able to secure, a very similar procedure was followed—a procedure very similar to that enacted at the Hunter convention—namely, that the one faction gathered together there as many of its delegates as it could, just as Hunter had gathered in his room after the temporary convention had dispersed as many of his faction as he could, and that motions were put and carried declaring the convention to be in order, electing a permanent chairman, and nominating

a candidate; and all by pretended roll calls of the counties, and responded to, God knows by whom—except, as the testimony certainly shows in the Hunter case, and certainly shows in the other case, that a majority of these delegates, even of contested delegates, never assembled at either place.

Mr. RAMSEY. In reference to the number of persons present in the Hunter convention held at Middlesboro, does not the record show, by the testimony of L. K. Rice, the chairman, that by an actual count, made by Dr. John Collins, of Letcher County, and J. G. Rollins, of Bell County, there were in the aisle facing the speaker 127 delegates, and to the left of the aisle, 104, making a total of 231? That you will find on page 454 of the record in the case of Mr. Edwards against Doctor Hunter.

Mr. THURSTON. Well, gentlemen, in the light of the testimony of respectable witnesses as to the number of men who remained in that hall, I can only believe that these witnesses counted these delegates somewhat in the same manner that they used to brand calves out on the range when they were getting ready to sell calves to an English syndicate on a book account. [Laughter.] The testimony shows by a great and overwhelming preponderance of evidence that there were not over a hundred men, outsiders and all, who went back into that room and participated in what is called the Hunter convention.

Now, I am not seeking to differentiate between Mr. Hunter's convention and Mr. Edwards's convention. [Laughter.] I am stating the facts as I believe them to exist from this record, and the committee must find, if they believe the evidence, that there never was at either convention enough men, all told, to constitute a majority of delegates.

Mr. WHITE. Allow me to ask Mr. Ramsey if it is not a fact that the names of the men he has given are now under indictment in their county? And will Mr. Ramsey allow me to ask further whether the evidence does not show that Mr. E. L. Stephens was a receptive candidate for Congress himself, and says in his testimony that he suggested to Ramsey that the 36 votes of the Whitley County delegation would nominate him, and said then to a man in the aisle that Whitley County would vote for Ramsey, and he called to the chairman that the vote of Whitley County was cast for Ramsey? This was the last county, and the crowd called for Ramsey, and Mr. Stephens said he assured Ramsey that he had been nominated instead of Doctor Hunter.

Mr. MILLER. I understand from the record that Mr. Ramsey made a speech accepting the nomination.

Mr. WHITE. Yes, and until he was pulled by the coat tails and drawn back and made to sit down, he did not know that Doctor Hunter had been nominated. [Laughter.]

Mr. THURSTON. There is no use, gentlemen, asking what happened there in that hall after the convention dispersed. In my judgment, it is absurd to insist that that convention ever reassembled or that it took convention proceedings. It was a disorganized mob, the ragtag and bobtail of the disrupted convention.

The CHAIRMAN. It is not yet too late for Mr. Ramsey to file a contest here. [Laughter.]

Mr. THURSTON. I think, myself, as I read the record, that if that

was a real convention, Ramsey was eulcerated out of the nomination. [Laughter.]

MR. MILLER. I largely agree with you on that proposition. [Laughter.]

MR. THURSTON. But, gentlemen, the same conditions prevailed, measurably, at London. And irrespective of the power of that original convention to adjourn, I want you to read this testimony through carefully and see whether you can get anything satisfactory from the evidence. Certainly there is no record as to what men participated in the London convention; no testimony as to what members of any particular county assembled there.

MR. TALLENT. The presumption would be, with no evidence to the contrary, that that was a fair convention.

MR. THURSTON. Yes; but they simply rounded up everybody they could to go to London, contestants and outsiders and others, and they had about the same kind of convention over there that they had at Middlesboro.

And yet, while I have gone over this history of the two so-called conventions, I rely absolutely upon my original proposition, that the election law of the State of Kentucky, being to all intents and purposes an adoption of the Australian ballot system, is, as determined by the highest judicial tribunal of that State, mandatory in all its essential provisions; that a political party can not get a candidate under the party heading on the ticket unless that law is complied with; that to hold the reverse would be to repeal the law, to put us back where we were before, and to set a precedent whereby we would declare to political factions and political candidates that, notwithstanding the law, they could still go ahead with the old political methods just the same, and enter into a fight for the control of committees and secure temporary organizations in any way they please, work upon officers and secure the placing of names on the ticket, rush to courts having no jurisdiction to get out restraining orders, unsettle conditions, and deprive the voter or mix up the ideas of the voter in the several communities. And if you disregard the law and say that a convention can be organized and can put a party ticket upon the official secret ballot provided by law in any other manner than by compliance with the statutes, you have destroyed the whole reform movement and put us back to that very grievous situation which gave rise to the desire of the legislatures of this country to enact remedial statutes.

Now, if the name was not properly on that ballot under the party designation, what follows? I have no possible doubt as to what the law is, and as to what it ought to be in that case. I think that the name on that ticket should be treated as if it were a blank space. No other rule will prevent the recurrence and further recurrence of the efforts to secure an unlawful place upon an official ballot. Some of the courts have decided that a ballot with a name improperly placed thereon under a certain specified designation shall be thrown out as void, thereby depriving of their votes the electors who properly voted for other candidates under other party devices.

I do not believe that is the law. Take, for instance, the case in the State of Kentucky. I understand there is a Labor or Reform party—I do not know exactly how it is designated. It did not cast

2 per cent of all the votes cast at the last previous election in the State. Therefore under the law it had no right to an official place upon the official ballot. The law is mandatory.

Mr. TALBOTT. You mean through convention or primaries?

Mr. THURSTON. Yes. They must go there by petition. They can not go there as a party through party action.

Mr. TALBOTT. That is right.

Mr. THURSTON. The case arose in Kentucky on behalf of this party, and I think on behalf of the Prohibitionists also. The Labor party, as I am informed, had cast nearly 2 per cent of the State vote in the last election. But anyway, whether it had or not, its party managers attempted to secure from the secretary of state an official place upon the official ballot, under the emblem adopted by them for their party. He had no right to put it there. But suppose he had? Suppose by an honest mistake, by a mistake as to the number of ballots cast at the last State election, he made up his mind that that particular party had cast 2 per cent of the votes, and thereby, through a mistake as honest as any mistake can be, he had put that Labor ticket and that Labor device on that official ballot of the State; what would inevitably have resulted? One of three things: First, that the ballot was void in toto; or, second, that, giving force to the old supposed doctrine that the wish of the elector was attested by the name on the ballot as he put it in the box, the votes should be counted, notwithstanding the prohibition of the law, notwithstanding they had no right on the ballot; or, third, the elimination of that column from the ballot, treating it in point of law as being a blank space, because under the law there was no such party, and no such candidate that had the right to be there.

Now, let us take up this question of giving effect to the intent of the elector. I said this morning that this position for which I contend, if it is carefully studied and considered, I think will be found to be supported by the same line of reasoning which the courts adopted in giving effect to the supposed intent of the voter under the old system of voting. Under the old system anybody could present a ticket at the polls, with or without a party designation. The party designation on that ticket amounted to nothing, meant nothing under the law. There was no other test that you could possibly operate under than to say that the voter, who had a right to put that ballot in, put it in under any title he pleased, put it in with any name on it he pleased, whether the man named had been nominated for the office or not, whether his name was written or printed thereon, meant to vote for every name on his ticket. There was no other possible test but to say that every man intended to vote for every name he put on that ticket in the ballot box. It was the old construction. It was the inevitable construction. It was the proper judgment of the law. It was the only test where you could not look down into the hearts of men. I insist that it is not now and never ought to be proper to call men to the witness stand and compel them or ask them to violate the right they have which guarantees them secrecy in the exercise of their elective franchise.

How is it now? The law has provided that parties may place the party ticket on the official ballot. It has provided that a party, as a party, may adopt and designate a pictorial device, and place it at the head of a ticket. It is provided that the man who makes the proper

mark at the proper place under that device at the head of the ticket votes for the whole ticket. Do you not see how the whole foundation from which we are to judge the elector's intent has been reversed?

The proposition now is that a party man will vote his party ticket. Experience teaches us that by far the larger number of votes cast under party designation are voted as party votes and not as individual votes for any man on that ticket. The law has been beneficent and wise in favor of the common people, those who give but little attention to political affairs, who do not read the papers as to the action of political conventions, who can not tell in a majority of cases what offices men are candidates for in their own party.

The law is for their benefit; that the ignorant as well as the educated may have an opportunity whereby they can certainly express their will and wish to vote, not for any one man, but to vote for the candidates of the party of his choice. And running all along through this election law is the idea that men voting under party designations are no longer exercising their choice as between individuals, but their intent is to vote for the party nominees, whoever they may be. And if you are to judge of the intent of the elector, you can only do it by determining that a vote under the device of his party carries with it the presumption of law and of fact that the intent was to vote the party ticket regardless of the individual, regardless of the men placed upon it, rightly or wrongly.

The CHAIRMAN. Assuming that to be the case, and also for the purposes of this question, we find that neither Doctor Hunter nor Mr. Edwards was entitled to have his name under the Republican device; nevertheless it appears that for Doctor Hunter 6,228, and for Mr. Edwards 6,102, votes were cast, either for them individually or, as you suggest, because they were each—one in some counties and one in others—supposed to be the party candidate, and the voters desired to vote for the party nomination. Now, only 4,557 votes were cast, or about one-fourth of the total vote, was cast for Mr. White. It is manifest that three-fourths of the voters desired the selection of the Republican nominee. Now, can we set aside—assuming up to that point your argument to be wholly sound—can we set aside the will of three-fourths of the voters of the district and declare elected a man whom only one-fourth of the voters desired?

Mr. THURSTON. You can and you must, if you take the position that I have advanced, that a party name or a party designation on the ticket that has no right to be there is not there.

Mr. TALBOTT. Not the designation, but the name.

Mr. THURSTON. Yes; the name under the designation. You must construe it as a blank space. And you will have extreme difficulty in laying down any other theory of law that will effectuate the Australian ballot.

We have gotten away, under this Australian ballot, from that old proposition that where two candidates are voted for and the vote of one is attended by fraud and deception so as to reduce his real legally cast vote to less than the number cast for the other candidate, the other is not elected, as was held in some instances, and which resulted in no election.

We have gotten away from that, I say, for the Republican ballot was a legal ballot or a blank. Either Hunter's or Edwards's name was on there rightfully or they were not on there at all; and you can not

give force to the Australian ballot unless you adopt that theory of its construction and its effect.

Mr. BYRD. Senator, do you think the effect of placing the emblem on the ticket was to change the result of that election? In other words, if none of the names had been printed the vote would have been different from what it is now?

Mr. THURSTON. There is no question about that. If that ballot had been blank where the Republican device appeared, as under my theory of what went before it it ought to have been, then the voters who indicated a party choice might have, and probably would have, voted for other candidates on the ticket, under other emblems and other devices, if there were any.

Mr. MILLER. Before leaving this point, Senator Thurston, I want to ask this question: Suppose the committee should find that the Middlesboro convention was not a legal convention, and that Doctor Hunter's name was not entitled to be on that ballot, although it was placed on the ballot, and the voters when they cast their vote knew that Doctor Hunter's name was on the ballot, and their attention was called to it, and they voted that ballot knowing that Doctor Hunter's name was upon that ballot; now, have we not clearly there the intention of the voter as to what he intends to do, and do you say that that vote should not be counted?

Mr. THURSTON. You can not reach the intention of the voter in any such way, because it is a matter of utter impossibility. It is only just touched upon in this testimony—the offer to ascertain what the will was of the 12,000 men who voted under the Republican emblem. You can not do it; and not only that, but, as I said, under the secret character and the very purposes for which the Australian law has been enacted, it ought to be against public policy to attempt in any way, except from the ballots themselves, to inquire as to how any man voted and what was the intent of any man who did vote. Experience will teach that a very large majority of ballots cast under our Australian system are cast by a mark under the emblem. I guarantee that there is not a man on this committee who had the least idea of all the candidates whom he voted for at the last election under his party emblem. If he did, he knew a good deal more about it than I did.

I guarantee that there is no straight party man, unless he has some personal reasons for voting another man's name on the ballot in place of his party nominee, that ever stopped to look at the ticket. The law has placed the guaranty of party regularity and legal nomination on it when it puts the device of the party at the head of the ticket. It has taken from the elector the responsibility of scanning his ticket as to the particular names on it. It has worked justice alike to the ignorant and to the learned. Hence it has given an opportunity for pictorial information, which was always the information which would be most quickly understood by the people in past ages, in their ignorant condition. It has given to every elector, educated or otherwise, pictorial information as to where he shall vote, if he wishes to vote for the candidates of his party.

Now, just a word or two, and I am done, if I am not detaining the committee.

The CHAIRMAN. The time for adjournment has about arrived.

Mr. THURSTON. Some questions were asked here the other day

along the line of Mr. Miller's inquiry of to-day, as to whether or not the Republicans of this district knew there was an election, and knew the different candidates. The fact that only 12,000 and odd votes were cast under the Republican heading in this election, when they had cast about three times that many votes in the election held a week before, shows well enough in itself that the people throughout that district were taking but very little interest in this election. The testimony here shows that Doctor Hunter was not very well known among the people in one part of the district, and that Mr. Edwards was not very well known among the people in the other part of the district. The testimony shows that men in the cities and men in the country in individual instances did not even know that an election was to take place.

There was no general understanding among the people that this election was to be held. They were paying but little attention to it. There was no personal knowledge, among a great majority of the people, of the different qualifications of the two candidates. The people did not understand throughout that district, and could not have understood in this maze of legal proceeding and contradictory action of the secretary of state, as to which of these two men was the Republican nominee. But it goes without saying that in that rock-ribbed Republican district of Kentucky the will and the wish of the Republican electors was to vote for the man on the Republican ticket, lawfully there, no matter who he was, what his grandfather had been, or what his political history may have been. They voted there as they vote in other parts of the country—for the party.

The personality of men under the Australian system is eliminated largely from the consideration of the voter. It is a matter of party choice. The wish and will of the elector is in the party emblem, and he votes under that, and that must be taken as expressing the will and wish of the voter. And, gentlemen, if a name unlawfully on the ballot—I do not care whether it is there by fraud, by mistake, by accident, by injunction without jurisdiction, or in any other illegal way—is counted, the law is a farce and there is a premium set upon attempts to override and evade the law.

You may say that this deprives the elector of the right and opportunity to cast his ballot in that one election for the man of his choice. It may be. But the evils resulting from that—his loss of his right of suffrage in the exercise of his choice in the one election—is infinitesimal in comparison with the advantage to every voter in the land of safely going to the polls under this Australian ballot law, without examination of what has taken place, without any man telling him, without reading the newspapers, and knowing, even if he can not read, that when he places his vote on the official ballot, prepared under the law of his State, he is safe in assuming that the name there is the name of the actual candidate of his party, lawfully placed there, and that he will not lose or be cheated out of a free expression of his will at the ballot box of his country.

The CHAIRMAN. Gentlemen, what is the will of the committee in regard to further meetings?

Mr. TALBOTT. The arguments have all closed.

The CHAIRMAN. General Dudley, do you desire to be heard further?

General DUDLEY. We should like to be heard briefly.

Mr. TALBOTT. I presume, as you are in town, we could hear you on Monday?

General DUDLEY. Any time that suits the committee will answer our purposes.

Judge ALCORN. Inasmuch as Mr. Edwards is interested also in this contest, I would like to have permission of the committee to be heard some time before the conclusion.

The CHAIRMAN. How much time will each of you require, gentlemen?

Judge ALCORN. I will not require over fifteen or twenty minutes.

The CHAIRMAN. If we say we will allow thirty minutes to the side, will that be satisfactory?

General DUDLEY. Mr. Ramsey finds that he will have to leave. He could not be here on Monday morning.

Mr. MILLER. We are going to dispose of this case to-morrow, between 10 and 12 o'clock.

General DUDLEY. I think half or three-quarters of an hour each would be enough. As we understand it, Mr. White is contesting Mr. Edwards's seat. He has no seat to contest, but he is contesting Doctor Hunter's seat. We feel we have the right to defend Doctor Hunter's seat against the attack of Mr. White.

The CHAIRMAN. We shall allow, gentlemen, thirty minutes to each side, if you desire to use it.

Mr. WHITE. I understand the chairman said yesterday we would have the privilege of replying to General Dudley, and some Kentucky decisions have been cited. Although the committee may not be aware of the fact, since the Goebel law was enacted there has been a modification of that law, and there have been decisions with which Captain Calhoun is familiar, and I will ask that when General Dudley is through Captain Calhoun can be heard.

The CHAIRMAN. We will give you half an hour in conclusion, then.

Mr. TALBOTT. Don't you think it would be well for him to give references to his authorities?

The CHAIRMAN. Yes; you ought not to use any authorities in conclusion of which members have not been informed. Give General Dudley and the others the references. General Dudley, what about the proof?

General DUDLEY. It is in the hands of the stenographer who took the dictation, and I think she assured Judge Ramsey that he would have it to-day. We have done everything we could do to push it along.

The CHAIRMAN. You are like the gentleman and his wife running to catch the train. They missed it because the lady had taken so long a time to dress. She said, "We did not run fast enough;" and he replied, "No; you did not dress fast enough." [Laughter.]

Mr. MILLER. I move the committee do now adjourn until to-morrow at 10 o'clock.

Carried.

The CHAIRMAN. The committee now stands adjourned until 10 o'clock to-morrow.

Thereupon, at 12.10 o'clock p. m., the committee adjourned until Saturday morning at 10 o'clock.

WASHINGTON, D. C., *January 14, 1905.*

The committee met this day at 10.30 o'clock a. m., Hon. James M. Miller in the chair.

**SUPPLEMENTAL ARGUMENT OF HON. JOHN M. THURSTON, OF
COUNSEL FOR JOHN D. WHITE, ONE OF THE CONTESTANTS.**

Mr. THURSTON. Before the discussion proceeds this morning there is one further proposition or phase of this case that I would like to present in just about three or four minutes, so that the other side may have the advantage of my position in respect to it.

First, I wish to advise them of a few additional authorities that we present and ask the committee to consider. In the case of *Mason v. Byrley*, Kentucky Law Reporter of October 1, 1904, at page 490—

Judge ALCORN. Twenty-sixth Kentucky Law Reporter.

Mr. THURSTON. Yes; Twenty-sixth Kentucky Law Reporter, being a case which we have already cited. I desire to call the attention of the committee to one portion of the opinion of the court, which we failed to copy in our brief, reading as follows, in the language of the court and having reference in this particular case to a Congressional committee in a Congressional district:

While those who constitute the membership of the governing authority of a political organization are not officers in the technical meaning of that term, the duties required of them by the statute are official in character, because they must be performed as therein prescribed, and penalties are provided by the statute for the failure to so perform them.

Mr. TALBOTT. I believe that applies to primary elections and conventions?

Mr. THURSTON. Yes. The provisions of the statute that they were construing in that case, as I stated yesterday, related to provisions of law respecting the calling and holding of primary elections; but the rulings of the court with respect to the action of these district committees, and as to how their membership is made up, and as to who must perform the acts of the committee, I think are so general in their character that they must be applied to all actions of the committee.

Mr. WEEMS. Right there—I beg pardon, Senator—let me ask you if this is not true: When the committee met to determine this contest before the secretary of state, on which the secretary of state revoked his former action in certifying a nomination, did they not then meet under the power of the statute which requires the secretary of state to take the sense of the governing body in the district?

Mr. THURSTON. I was going to speak of that.

Mr. TALBOTT. If either of these conventions was illegal, then no matter what the action of these bodies was, it could not be made legal.

Mr. THURSTON. I also cite from the case of *Graham v. Graham*, which is a further decision covering the same points that were decided in another case which we cite in our brief.

Mr. SULLIVAN. Is that in your brief—*Graham v. Graham*?

Mr. THURSTON. No, sir; it is in the Kentucky Law Reporter, page 550. The court says:

The space in which the Loys was written was in the column containing the names of candidates under the Democratic device. These names were written without the oath or request of any of the electors to whom the officers of election delivered them. The electors placed a + in the circle under the Democratic device on 104 ballots containing the name of Loy, which had been written by the clerk. These ballots were counted for the appellee as well as for Loy. It is urged that they should be rejected because the clerk of the election had no authority in law to write the name of Loy on the ballots; and that those who voted them did not place the + in the square opposite his name. The clerk had no authority to write the name of Loy on the ballots. Had an elector desired to vote for him, he could have written his name in the blank space left for that purpose, made a + in the square opposite the name thus written, and it would have been a vote for Loy, as authorized by section 1471, Kentucky Statutes. It is simply an abortive attempt of the electors to vote for Loy. The ballots could not be counted for him.

That is the decision of the court, and while the vote in that case is not specifically stated in this opinion, it is evident from reading it—and no other conclusion can be drawn—that if those votes were counted for him he had the highest number of votes, and the court holds that those votes can not be counted, but the balance of the ticket can. Practically those votes are void, and the man who had less votes on the ticket than he had is elected, making the same case I presented here.

A very interesting case under the Australian ballot system in Connecticut is presented in the case of *Talcott v. Philbrick*, in the Fifty-ninth Connecticut Reports, beginning at page 472. I will not take time to read from this report except upon one point, although I ask the committee to examine it and consider it as being a well-considered case upon the proposition that names upon the ballot, unless placed there in strict accordance with the provisions of law, can not be considered. But what I wish especially to call attention to is the following opinion of the court—

(At this point, Hon. Marlin E. Olmsted, chairman of the committee, entered the room and took the chair, Hon. James M. Miller vacating the same.)

Mr. THURSTON. The opinion of the court as to the construction to be placed on this new ballot legislation, seemingly general throughout the several States. Referring to one provision of the law, the court says:

We are relieved of any obligation to inquire as to the necessity or reason of this or that requirement; and we are not at liberty to dispense with anything that is required, whatever the reasons for it may be, or even if without any apparent reason at all. The legislature has spoken, and obedience is our first and only duty. It is at liberty to throw around the ballot box such safeguards and regulations as it may deem proper, and it is the duty of the citizen to conform thereto. Some inconvenience is not too great a price to pay for an honest, pure ballot.

It was brought to my attention last night that my silence in my argument with respect to the so-called district committee meeting after the nomination and primary election might be construed, or rather might lead to the thought on the part of some member of this committee, that perhaps prior shortcoming in the organization of the committee calling the original convention and the proceedings of the

subsequent so-called conventions themselves may have been cured by subsequent action of the district or State committee, and that it might further suggest itself to the committee as to these questions originating in the proceedings prior to the holding of the convention, that if the governing power—the district committee—did act upon them and confirmed and approved them, their action might be considered res adjudicata, so far as the committee is concerned. I only desire to say on this subject this: That that committee as a governing body was called to meet at London on November 2. It was called on 24 hours' or less notice.

Admittedly, from the descriptions that are presented in this testimony of that district and its railroad and other facilities of travel, that, to begin with, was a notice which rendered it utterly impossible that the members could have reached the designated point at the time of meeting. But leaving that aside, under the law as decided by the court in Kentucky, if that committee were to meet as a governing body to determine as to whether or not the convention and pre-convention processes had been legal and in accordance with the party law and usage, or were to meet officially and judicially to perform statutory duties, without question it was brought under the restricted construction of the decision of the supreme court in Kentucky under the same requirements as it would have been had it met to determine the result of a primary election.

And it goes beyond all saying that the decision of the supreme court, that that body could not act through proxies, applies with full force, and when it did meet in so-called meeting at London, there were only 3 members of that committee present out of 19. All other representation was by proxy, telegraphic, mail, imaginary or otherwise. So that, really, there could not have been anybody there, which as a governing authority, that could ratify or approve anything, or leave on record that which would estop this committee from inquiring back of it as to what had actually taken place.

Mr. CURRIER. Could an appeal be taken, then, from that meeting to the State central committee?

Mr. THURSTON. If that committee did not meet and organize with the necessary membership required to authorize its legality under the law, of course any action that they did take is void, and there could be no appeal from a void action of a committee. But even if it did meet and act, if we are to consider for a moment that it was legally in session and did act upon certain questions before it, I think it is perfectly plain that prior to that one meeting of the State committee, where it issued a political bull, there was no such thing in contemplation in party law as an appeal from the district committee to the State committee.

Mr. SULLIVAN. Is there any suggestion or any testimony that in that meeting the question of the validity of the call of the convention was discussed at all?

Senator THURSTON. No, sir.

Mr. SULLIVAN. I presume the only thing discussed was which of these two gentlemen was nominated at the convention?

Mr. THURSTON. That was undoubtedly the only question.

Mr. SULLIVAN. Then they did not consider that prior question?

Mr. THURSTON. No, sir; no such question was considered. And yet

I wish to define our views upon this, because there might have been some idea in the mind of some member of this committee that that action was a party action, passing judgment upon all that had preceded it, and that it would be *res adjudicata* as to the inquiry of this committee.

Now, just one other word, reenforcing what I said yesterday in answer to the question propounded by a member of this committee. I was asked whether or not Mr. White had instituted any legal proceeding to prevent the secretary of state from placing the names of either one of these two candidates on the ballot. I have nothing to add to the answer I made to that yesterday, except to say that in this particular case, almost up to the eve of the election, the courts of Kentucky were having before them that very question. It was being litigated in the district, and all the candidates and everybody in interest was waiting, as it is sometimes said, with bated breath.

Mr. SULLIVAN. But the decision could be only as to one of them?

Mr. TALBOTT. I asked the question whether it could have been done, and you said as between the two, Mr. Edwards and Doctor Hunter, that it was in the courts, and then the chairman asked, Had Mr. White instituted proceedings?

Mr. THURSTON. It is possible. I could not answer with any authority on that question. It is possible that Mr. White might have instituted some sort of an action against the secretary of state.

Mr. WEEMS. What right would he have to institute proceedings until after the committee had tried to meet?

Mr. THURSTON. I said yesterday that the delay in the action of the secretary of state was such, and also so fortified as to the pending litigation between Mr. Edwards and Doctor Hunter, that the whole matter was held in abeyance clear down to the eve of election.

Mr. CURRIER. But he could have instituted proceedings as soon as the secretary of state issued the first certificate?

Mr. TALBOTT. The secretary of state had all the papers with him all the time from the 13th of October.

Mr. THURSTON. It is possible that he might have found some court or tribunal having jurisdiction over that question; but beyond that is the proposition that he was not required to do it. A man can rest safe in supposing that a secretary of state will do his duty, even if he starts out by failing to do it, as is alleged, by certifying Mr. Hunter's name.

Mr. TALBOTT. But, Senator, the secretary of state had issued one certificate that Edwards was a candidate——

Mr. THURSTON. That Hunter was a candidate——

Mr. TALBOTT. Yes; that Hunter was a candidate. Now, could not Mr. White have said, just as well as Mr. Hunter, that that certificate ought not to go, and the convention was not legal?

Mr. THURSTON. It is possible, and possibly he would have found himself in the same difficulty that both of these other litigants were in when they appealed to courts without jurisdiction.

Mr. CURRIER. When was Mr. White's nomination paper filed?

Mr. THURSTON. It was filed about the same time as the others. That leads me to suggest what may undoubtedly have suggested itself to all of you, that none of these three candidates was in a position to

file his nomination papers thirty days before the date fixed for the election. They were all past the thirty-day limit, and therefore——

The CHAIRMAN. And then none of them ought to have been on the ballot?

Mr. THURSTON. And therefore, I presume, we all agree that that thirty-day limitation was merely directory. [Laughter.]

Mr. MILLER. Judge Thurston, I want to ask you a question before you quit, concerning the right to appeal from the Congressional committee to the State central committee. You take the view that their action was void, and on appeal would not lie. Suppose the action had not been void and they had a majority present at the time they acted upon the nomination of Mr. Edwards, could an appeal have lain, or could an appeal have been taken, from the Congressional committee to the State central committee on the question of the nomination of a Congressman if there was no authority in the rules and regulations of the State central committee and no law upon the subject?

Mr. THURSTON. Well, if I have to get into this contest between Hunter and Edwards, I must express my opinion that there was no appeal provided for under the rules and regulations of the Republican party, and no right to appeal could exist without some specific provision of law.

The CHAIRMAN. Now, gentlemen [addressing other counsel], it is immaterial to us which of you speak first.

Mr. THURSTON. There is just one suggestion. In citing the case of *Graham v. Graham* a few moments since, I did not find in that record a statement of the vote which was cast for the successful candidate in the contest before the court. That case was a review of the case of *Edwards v. Loy*, which is cited in our brief, and in going back to that case we find that Loy received 194 votes and Edwards 42 votes. One hundred and ninety-four votes were excluded under the law, and the man who received only 42 votes got his office.

Mr. WEEMS. Senator, allow me to ask you, Do you think that if a man who wanted to vote for Doctor Hunter in one of those five counties where his name was only printed on the ballot had disregarded those printed words, "W. G. Hunter," or whatever the name is, and right below it had written Hunter's name, as the ballot law provides, would he be casting a valid ballot?

Senator THURSTON. I do not think he would be, under that party designation. I do not think it had any place on the ticket.

Mr. WEEMS. Is not the rule that a man can write in any name he pleases?

Mr. THURSTON. The courts have decided, in one of these cases which I cited, that he can not write it under the specific designation if it does not belong there.

Mr. SULLIVAN. There is a blank space left on the ballot for the independent voter——

Mr. THURSTON. Yes; for the independent voter——

Mr. SULLIVAN. Who wishes to vote for some particular man.

Mr. THURSTON. Yes; if there is a column there, properly under the law, with the heading and the name, and the voter wishes to vote for anybody else, of course there is a blank space, or a space in which a name can be written, and he can fill it in.

Mr. JESSE. Here is a ballot, Mr. Weems, where a blank line is left

under the printed name of the candidate of each party for each office in each of the three columns of the ticket. [Submits a pamphlet copy of the Kentucky election laws, dated February 15, 1901, where on page 18 is an illustrated reproduction of a specimen ballot.]

The CHAIRMAN. Now, General Dudley, what suggestion have you to make as to which of you should speak first?

Mr. LANDIS. I would like to ask you, Senator Thurston, this question: If Doctor Hunter's name was on the ticket under the party symbol, any man who wanted to vote for him and mark his vote there, but who doubted the right of Doctor Hunter's name to be there—could he write Doctor Hunter's name on that paper without vitiating the ballot?

Mr. THURSTON. It would be a void ballot if the party had made no nomination at all, and had no right to its party column and its party device on the ticket.

Mr. CURRIER. But there is a space left in the party column where an independent voter may write in the name under the party emblem.

Mr. THURSTON. Let me express my view of that. If there is a party column with a long line of candidates and most of them properly nominated, so that that designation on the column is rightfully there; if there be some man's name on there who is not properly on that ticket, then the vote written in with the same man's name would necessarily count, assuming that he got it on right. But if that whole nomination, if that placing of that whole party device and column was made there without authority of law, then I should say it would be void.

Mr. MILLER. You think you should not count the ballot for anybody?

Mr. THURSTON. Yes; because in that column, even if they were written in, the device or emblem was not properly placed.

Mr. DUDLEY. I understand Judge Alcorn gave notice that he would like to be heard, and inasmuch as he is not a contestant or contestee in this case, I would be glad if he could be heard first.

The CHAIRMAN. Very well.

SUPPLEMENTAL ARGUMENT OF J. W. ALCORN, ESQ., COUNSEL FOR D. C. EDWARDS, CONTESTANT.

Mr. ALCORN. I hope to detain the committee but a very few minutes in attempting on behalf of Mr. Edwards to respond to certain suggestions of the distinguished counsel for Mr. White in this case.

At the outset I wish to say that he evidently has an erroneous appreciation of the Kentucky character in one respect. He seems to think that they are always ready to run in the face of flying bullets and to seek trouble. I disclaim that as being characteristic of my people. They are like everybody else in that respect—

Mr. THURSTON. Not to seek trouble, but never to run away from it.

Mr. ALCORN. That is in better form. There is one class of trouble in which the typical Kentuckian is like everybody else: He never likes to be struck by a stray bullet; or, as was put in a private conversation I had once with a distinguished old lawyer in Kentucky, whose courage was undoubted, he said he never objected to facing a gun presented at him, but whenever stray bullets began flying around he

ran, because there was danger then of his becoming an innocent purchaser of a stray bullet [laughter]. That is characteristic of everybody, and that is the sentiment that seems to have actuated a large majority of those delegates in voting for an adjournment from Middleboro to London.

They went, as shown by the testimony of more than a dozen men, supporters not only of Mr. Edwards but of Mr. Hunter also—they went there hoping to have a pacific meeting. They left there because they found they could not have it, and were in actual appreciation of personal danger; not personal danger on account of personal fear, but personal danger on account of the fact that the indications were that a shooting affray was liable to occur in that hall at any time, crowded as it was, and they did not know who would be the victim of stray bullets.

Mr. SULLIVAN. Is there any evidence that there were armed men?

Mr. ALCORN. Yes——

Mr. DUDLEY. One.

Mr. SULLIVAN. There is no presumption that every Kentuckian carries a gun, is there?

Mr. ALCORN. Not except when he is at Middleboro [laughter].

Mr. BYRD. There is presumption, however, that one Kentuckian with a gun produces danger [laughter]?

Mr. ALCORN. Yes.

Now also the argument as to the regularity of that convention, made by the distinguished counsel, seems to have been based on an erroneous construction, not only of the language of the rules of the Republican committee but of the testimony as to how that convention was organized. If I understood him correctly, he said that the temporary chairman made rulings admitting to seats in the convention the delegates holding certificates from the county chairmen, I believe, and his objection was that it should have been certified by the county chairmen and secretaries.

Now, the rule, if you will examine it, provides that he shall recognize that delegation, that contesting delegation, which holds credentials from the convention which was called to order and organized by the chairman of the county committee.

To put it in plain words, in this case the testimony shows that the rule was observed by Chairman Cooper, of the district committee, when he called the convention to order for the purpose of effecting a temporary organization. It was not his ruling in accordance with the prescribed rules of his party which admitted these delegates from the contesting counties. It was his ruling which excluded the contesting delegations, pending the temporary organization, in that he followed the rule prescribed by party law.

Now, to proceed hastily, I will call the attention of the committee——

Mr. THURSTON. Do I understand your proposition to be that an appeal was taken from the ruling of the Chair, when in that case there was no appeal?

Mr. ALCORN. No, sir; there could not be any appeal. Then, after he had thus seated the delegates, the convention as a body representing the Republican party had superseded all control by the executive committee of the party in the district. They had the interests of the

Republican party in their custody. They then proceeded to perform the duties prescribed by the committee to them, so far as they could as a temporary organization. They were a convention. They were the representatives of the Republican party. They were the Republican party. But as I discussed that question in the Hunter case, and it is not proper that I should discuss it further here, I simply throw out the suggestion in response to what Senator Thurston said on the subject.

Now, coming up to the other point which he makes, that in calling a convention no member of the executive committee of the party can act by proxy, I wish to call the committee's attention to the fact that the case of *Mason v. Byrley*, on which he relies to support that contention, is one that arises under the primary election law in the State of Kentucky.

You will find by an examination of the statutes of Kentucky on the subject of elections that in the year 1892 the legislature passed a primary law regulating primary elections in the State. It has been decided by our courts that that law must be complied with in every primary election; that the primary election of a party can not be held otherwise than under that law. That law provides that the executive committee of the district, in the case of a district primary election, shall be a canvassing board, and it is a contesting board as well. It also prescribes that, before the members of that committee shall proceed to the discharge of their duties, they shall be sworn to the faithful discharge of that duty. That is a statutory requirement in this primary election law, because they are called upon to discharge certain official duties.

And inasmuch as penalties are denounced against them by the statutes for the failure to perform their duties, the court in the case of *Mason v. Byrley* very properly decided that their power under the law could not be confided through mere proxies, because you must have some person who can be punished for the violation of that law and for the failure to perform the duties prescribed—some person subject to prosecution for the unfaithful performance of those duties. You will find, however, that no provision is made by any statute of the State regulating party conventions. The State has never attempted to enact a law relating to party conventions.

Mr. CURRIER. Just an instant, Judge. Had the members of this committee been sworn at the time they called this convention?

Mr. ALCORN. They had not been, sir. There is no requirement of any statute of Kentucky requiring them to be sworn.

Mr. SULLIVAN. And there was not an actual majority of the members of the committee present in person?

Mr. ALCORN. No; I think 8 were there in person, and 11 acting by proxy.

Mr. SULLIVAN. You concede Senator Thurston's position, both as to the fact and as to the law, but say it does not extend to conventions?

Mr. ALCORN. No: it does not extend to conventions.

Mr. CURRIER. Would not these same men be the members composing the canvassing board later on?

Mr. ALCORN. No: it was the convention.

Mr. JESSE. Those were the contesting board, and not the canvassing board.

Mr. ALCORN. They are not the contesting board, even.

Mr. CURRIER. They would be the canvassing board in the primary?

Mr. ALCORN. They are not even the contesting board later on. They are simply boards intrusted with the management of the affairs of the party and to determine who constitutes, or who is, the regular nominee of the party. While the statute says that the governing authority of the party shall designate to the secretary of state which one of two contending candidates is the one entitled to have his name printed under the party device, the statute is silent as to any requirement that in the performance of that duty this governing authority shall act under oath. In that respect they acted just as they would have acted had the statute in regard to primary elections never been enacted.

Now, I want to call the attention of the committee further to the decision in the case of *Mason v. Byrley*. That case, as I said a moment ago, arose in this same district, and between these same parties in the contest of *Edwards v. Hunter*. In that case the committee had met and ordered a primary election, and in accordance with the requirements of the statute they provided that after the primary election the returns should be made to the committee assembled at London. A portion of the committee met at London at the time prescribed by the call of the committeemen. At the same time 8 members of the 11 hied themselves to Middlesboro, and there they associated with these 3 gentlemen who claimed to have proxies from 3 other members of the committee who were absent, and they then pretended or assumed to be a quorum of the committee, and they proceeded or pretended to canvass the vote of the district; and from that conference arises the false result. In this case the other members of the committee instituted proceedings against C. V. Byrley and others, and asked for an injunction against these men, and asked that they be compelled to meet and canvass the vote under oath.

The court of appeals sustained the contention of the plaintiffs in that case, chiefly on the ground that, inasmuch as these men were required to discharge these duties under oath, they were quasi officials of the State of Kentucky, and that they could not therefore delegate their power by proxy, but must act in person. They did act in person, and the result was exactly the opposite of what the pretended meeting at Middlesboro adopted.

By reading this case of *Mason v. Byrley* you will find that all the way through it is permeated with the idea that the committeemen can not act by proxy, because of this statutory enactment which imposes on them the duty of being sworn before they enter upon the discharge of their duties, either as members of the canvassing board or as members of the contest board. But as I said, the statute is silent as to any provision for a primary convention. That statute, as I say, was enacted in 1892.

Mr. SULLIVAN. What is the citation?

Mr. ALCORN. Article XII, section 111, and succeeding sections, in the compiled primary election laws that we have here [exhibiting pamphlet copy of Kentucky election laws, page 68].

Mr. WHITE. Judge Alcorn, will you allow me to ask you a question right there?

Mr. ALCORN. Yes; if it is not too long.

Mr. WHITE. The committee that met at Somerset to recount the votes in the district, after those proxies met at London—is it not a fact that they threw out the county of Bell?

Mr. ALCORN. Yes.

Mr. WHITE. Please explain to the committee how that was done.

The CHAIRMAN. The chair will state that interruptions of gentlemen with questions must be submitted through the chair. The committee would prefer to hear you [addressing Mr. Alcorn] make your argument in your own way.

Mr. ALCORN. I will simply say that they threw out the county of Bell, because they found that the returns from two precincts that had pretended to give large majorities for Hunter to be fraudulent; and because of the fraud in those two precincts they threw out the county.

Mr. WHITE. I beg the chair's pardon for interrupting.

The CHAIRMAN. That is all right. There are others besides the committeemen here, and they are waiting to be heard.

Mr. WHITE. I beg your pardon.

The CHAIRMAN. There is no occasion for begging pardon. We simply want to direct matters into the proper channel.

Mr. ALCORN. To show that my contention is right—to the effect that the statute does not intend or that the legislature of Kentucky has never intended to withdraw and has not withdrawn from the members of a party committee the power to act by proxy in any other regard except the conduct of primary elections—I will call your attention to the case in the Fifty-fourth Congress of *White v. Boreing*. It came up from this same district.

The CHAIRMAN. Where is it reported?

Mr. ALCORN. I have it in the Digest of the reports here.

Mr. RAMSEY. Page 606.

The CHAIRMAN. Page 606 of what?

Mr. RAMSEY. Of the Digest of Contested Election Cases—Rowell's Digest, printed in 1901.

Mr. ALCORN. In that case the contestant, Mr. White, contended that he should be awarded the seat, notwithstanding the fact that the contestee, Mr. Boreing, had received a large majority of the votes cast in the election—contended on the ground, first, that at a meeting of the committee of the Republican party they required that the candidate before a primary election which had then been ordered should pay an assessment for the purpose of defraying the expenses of that primary election.

Then, again, no person other than Boreing having paid his part of the expense of conducting that primary election, and each being the only person before the party as a candidate for the nomination, the committee meeting was held to be empowered by the provision of the statute to declare the nominee, and did declare Boreing to be the nominee. In each of these meetings the members of the committee acted by proxy. The committee, I find from the extract of the report, says:

We are referred to Rule No. 29 of the Republican organization of Kentucky, which is said to read as follows:

"No delegate elected to a State or district Republican convention shall be permitted to cast a vote by proxy."

This was not, however, a State or a district Republican convention, and the parties present did not attend as delegates elected to said convention, but as

members of the district committee of the Eleventh Congressional district of Kentucky, a standing committee. As this district committee or governing authority is recognized by statute, and is authorized in the case of a tie vote or contest at a primary election to hear and determine such contest and decide who shall be entitled to the nomination, the argument is made on behalf of contestant that its members are public officers and can not delegate their powers. But even as to public officers the distinction is always drawn between duties of a judicial nature and those which are purely ministerial. The evidence shows that not only in the State central committee, but also in the district committees of the Republican party the use of proxies is quite common.

And for that reason the committee reported adversely to Mr. White. That report, as I contend, was a construction, by a duly authorized body, of what the statutes of Kentucky mean in regard to the definition between primary elections and conventions. That committee decided, in other words, that in matters not purely judicial the members of the district committee can act by proxy, and, acting by proxy, their acts are regular and valid. So that in this case the members of the committee when they acted by proxy came up to the full measure of their requirements, as established by the report of the committee and by the action of the House of Representatives in that case of *White v. Boreing*.

In addition to that, now—that occurred in 1898—in addition to that, and since that time, we have had at least two sessions of the legislature; and we know that it is a well-established principle that if a proper tribunal places a particular construction upon the statute of a State and the legislature fails by subsequent enactment to correct that construction, it is a tacit acquiescence by the legislature in that construction.

So I contend that both by the precedents established as well as by the tacit acquiescence of the legislature the principle is well recognized that in calling a convention a member of a district committee can act by proxy: and the act of the committee, composed of regular members in part and of proxies in part, is the act of the governing authority of the party in the district when it calls for the meeting of a party convention for the nomination of a candidate.

Mr. SULLIVAN. Is there any decision in Kentucky courts for or against your contention?

Mr. ALCORN. None of any kind. This decision in the case of *White v. Boreing* is the only one. The laws are silent beyond the manner of holding conventions, but they recognize the fact that a nomination by convention is one of the means of placing a party nominee's name on the official ballot.

Mr. SULLIVAN. When was that declared in the law?

Mr. MILLER. How long has the old convention law been in force in Kentucky?

Mr. ALCORN. Since the constitution or convention was adopted in 1891.

Mr. SULLIVAN. Has there or has there not been a uniform practice in the use of proxies in conventions?

Mr. ALCORN. In this case of *White v. Boreing* it is said that that has been the rule and practice. Members may attend by proxy the meetings of the committee. And although I have not been mixed up in party conventions in recent years, yet I may say it has never been doubted that a member of a district or State or county committee at a

meeting can delegate that power to a proxy, and when so done it will be as binding as when done by the principal himself.

Now, another suggestion, and I am done.

Mr. WEEMS. This meeting of the committee to determine the place and time of convention was a ministerial meeting, was it not? -

Mr. ALCORN. Yes, sir.

Mr. WEEMS. Was the meeting of the Congressional committee held at the instance of the secretary of state to decide which of these two men was nominated—was that a judicial act, or a ministerial act?

Mr. ALCORN. Simply ministerial, to speak for the party.

Mr. SULLIVAN. To decide which candidate was the lawful candidate. Was that a ministerial act? You mean judicial, do you not?

Mr. ALCORN. It was judicial in its nature, but this statute, which says the governing authority shall designate to the secretary of state which of the parties is the nominee, is silent as to the requirement that they shall act under oath. The statute only requires that the members of the district committee shall act under oath in calling a primary, and in canvassing returns of a primary, and in sitting as a contest board.

Mr. WEEMS. You think when the election law calls upon a body to render a judicial decision it means that body can send another body by proxy to do that?

Mr. ALCORN. I think it can, and it has been the practice.

Mr. MILLER. What was the provision, if any, prior to the passage of this primary election law, for the purpose of determining who had the right to go on the ballot in your State under the old convention system?

Mr. ALCORN. Until this present ballot law was enacted we had the viva voce system of voting.

Mr. MILLER. You simply went up to the polls and told the judges or clerks who you wanted to vote for?

Mr. ALCORN. Yes, sir; that was the manner of voting in Kentucky up to November, 1891.

The CHAIRMAN. You mean 1891, or do you mean 1901?

Mr. ALCORN. I mean 1891.

Now, there is only one other suggestion I wish to make. Mr. White does not pretend that his name was placed on that ballot as the candidate of the Republican party at all. On the contrary, the record shows that he petitioned to be placed upon the ballot as the candidate of what he called the Law and Order Republican party. He does not pretend to have been placed there as the nominee of the Republican party, but simply as an independent, running under a device of his own, and asking the suffrage of the electors on account of his particular personal merits and not on account of his party affiliations. For that reason I insist that he stands in no attitude before this committee to raise any question as to the right of either Doctor Hunter or Mr. Edwards to have been placed on the official ballot as the nominee of the Republican party at the special election in November, 1903.

In addition to that, as suggested by the distinguished counsel for Mr. White, the secretary of state had filed with him on the 19th of October, 1903, the certificate of both Hunter and Edwards claiming to be the nominee of the Republican party, and each claiming to have his name placed under the Republican device on the official ballot. That

was a matter of information that must have come to the ears of Mr. White. In fact he will not deny that he actually knew it. Then he had his remedy if he thought that that militated in any wise against his race. It was his duty to the voter to proceed by proper action in court to restrain the secretary of state from certifying the name of either one of these gentlemen to the county clerk as the nominee of the Republican party.

That he had ample time to have done that there can be no doubt. It was simply a question such as has been brought before this committee by his distinguished counsel, as to whether or not the call of the committee was regular, as to whether or not there was any actual call of the committee. It was a question that ought to have been stated in the proceedings, and there would have been no necessity of proof on the subject. The courts could have disposed of it in a very few hours' time. But he failed to do that. He stood by it. Here they cast their suffrages in one case for Mr. Edwards, and in the other case for Doctor Hunter; and now it is too late for him to come and raise that objection.

Mr. WEEMS. One question of fact: Did Mr. Edwards take part in the meeting of the State central committee that decided that contest?

Mr. ALCORN. No, sir; he was there, and objected at the meeting of the district committee at London. There has been complaint that on account of the shortness of the notice the members of the committee did not have a chance to get there. That might have had some degree of plausibility but for the fact that we found that 13 out of 19 members were there in person or by proxy. Mr. Edwards was there in person and Doctor Hunter was there by his attorney. The respective parties to that controversy were before the board. Mr. Parker represented Doctor Hunter and had a proxy. He introduced his protest—no, not his protest, but filed his affidavits to show that Hunter was entitled to be declared the nominee; and until he saw that the committee would be adverse in their report to him, he remained before that committee. At the last moment only did he withdraw and enter a protest.

Mr. MILLER. Let me ask you a question: Did Mr. Edwards file any affidavits? Did he or his attorney file any affidavits or any evidence of any kind before the State central committee?

Mr. ALCORN. I am just coming to that as a finality. The record shows that at that meeting proof was heard by this district committee—proof both oral and written was heard by the district committee. Then Mr. Parker, for Doctor Hunter, asked for an appeal to the State central committee. When the State central committee met at this pretended convocation at Louisville—at the Willards Hotel at Louisville—they had no record of any kind before them. They heard no proof. They read no writing, except some affidavits which were confessedly not such affidavits as had been filed before the district committee. They did not have one particle of testimony before them. It was said by Mr. Edwards, "If you persist in your jurisdiction, I insist that you have a record before you." And notwithstanding the fact that they did not have a record before them they persisted in declaring that, in their opinion, Mr. Hunter was the nominee.

There was never an act attended by greater circumstances of suspicion, and never an act which was more null and void in that way.

It is said that only some of the clerks were misled—apparently misled. They were willing to be misled. They claimed to have been misled, and as I showed here in my argument the other day, the active man in producing that misleading was Mr. Hunter.

The CHAIRMAN. Let me ask, how long do you propose to speak?

Mr. ALCORN. How long have I been before you?

The CHAIRMAN. About thirty-two minutes.

Mr. SULLIVAN. The Kentucky statute neither authorizes nor forbids the use of proxies by members of the Congressional committee in calling a primary election. That is so, is it not?

Mr. ALCORN. Yes.

Mr. SULLIVAN. And that is true also as to conventions?

Mr. ALCORN. Yes.

Mr. SULLIVAN. Now the duties of the members of this committee in calling a primary election or a convention are similar, are they not?

Mr. ALCORN. No, sir; they are dissimilar in all material respects. They are not the canvassing board of the returns of the convention.

Mr. SULLIVAN. I mean as respects the calling only?

Mr. ALCORN. They are the same.

Mr. SULLIVAN. Do you think those duties are ministerial?

Mr. ALCORN. They are ministerial.

Mr. SULLIVAN. That committee has duties in regard to the convention later in the proceeding similar to those that it has with respect to the primary? That is to say, that Congressional committee assumes judicial functions when it determines on evidence which of two candidates is the party candidate, entitled to the emblem; so that at some stage of the exercise of their functions their functions assume the nature of judicial functions?

Mr. ALCORN. Yes.

Mr. SULLIVAN. Then how do you reason that the law sanctions the use of proxies in the one case and not in the other—in a case where the statute is silent as to both features?

Mr. ALCORN. Because in the primary election law it is expressly required that they shall act under oath. It is silent as to conventions; and being silent as to conventions, that simply leaves the manner of conducting conventions and calling conventions to the practice as heretofore pursued in the State.

Mr. SULLIVAN. And the failure to require an oath is, then, in your mind, the only reason for differentiating the two cases?

Mr. ALCORN. Yes; and that is what the court of appeals said in the case of *Mason v. Byrley*.

Mr. CURRIER. Are there penalties denounced against them for using proxies?

Mr. ALCORN. None whatever. But there are as to members of district committees in primaries.

Mr. DUDLEY. Gentlemen, Judge Ramsey will consume most of the time allowed to us, in reply to Senator Thurston's argument.

SUPPLEMENTAL ARGUMENT OF W. R. RAMSEY, ESQ., OF COUNSEL FOR HON. W. GODFREY HUNTER, CONTESTEE.

Mr. RAMSEY. Mr. Chairman and gentlemen of the committee, the contention of Mr. White in this case is that he is the only candidate whose name was properly placed upon the ballot, and that the name

of Mr. Edwards and the name of Doctor Hunter were not legally placed upon the official ballot, and therefore he asks this committee to disfranchise or to reject the votes of something over 12,000 voters in the Eleventh Congressional district of Kentucky, and to hold that he had been elected by a vote of something more than 4,000 votes cast at said election.

That is certainly contrary to any ruling in any case that has been cited to you, and it is certainly contrary to the law that has been recognized and held by Congress. In the case of *Fairchild v. Ward*, which is reported on page 559 of Rowell's Digest of Contested Election cases, the committee said:

It is by no means clear from the evidence that contestant was the regular nominee of the Republican party. The evidence on this point is in an irreconcilable conflict. There is much to support the claims of each of these parties. Your committee is unable to agree as to which one was entitled to have his name placed upon the ballot as the Republican candidate.

Contestant insists that the decision of the court of appeals practically settles the whole controversy in his favor. While admitting that the opinion of a court of such high standing is entitled to great respect, yet we do not feel that it has all the effect which contestant thinks would be attached to it. When this court held that Justice Edwards had no jurisdiction of the proceedings to review, it ousted its own jurisdiction to render an opinion upon the merits of the case which would be conclusive upon the parties. Whatever is said upon that subject was clearly obiter dictum.

It is clear to us that the court did not contemplate that its decision should in any manner affect the election already held.

And in any case the committee could not alter the result of the election.

If we were to assume that contestant was the regular nominee of his party, and that he had been deprived of the right to have his name go upon the official ballot in the Republican column by a decision that was void, because of the want of jurisdiction in the justice of the supreme court who made the same, still we do not believe that we would be authorized to count for him the votes cast for Mr. Ward; nor do we think we could declare the election void.

I will not read the opinion more at length, but that seems to me to be exactly in point.

The State committee and the State convention decided in favor of the delegates representing the Fairchild faction. At the judicial convention the Fairchild delegates were also seated. The court of appeals held that it should follow these determinations, and refused to go further back into the controversy. Had this court excluded from its view these actions by the regularly constituted party authorities a different result might have been reached. It might have come to the same conclusion as did the supreme court and Justice Edwards. But the view we have taken of this case renders it unnecessary for us to decide which one of these parties was entitled to have his name on the ballot under the Republican emblem.

In that case the committee held that although a man is not properly upon the ballot, yet if he has received the vote in the absence of fraud, the committee will not disturb him.

Now, it has been said that the nominee is entitled to the party vote, and that after a candidate procures his name to be placed under the log cabin and under the party emblem on an official ballot he is entitled to the party vote; that when the voter goes to the polls he votes for the party and not for the man.

Now I submit this proposition: In this case here is the official ballot. In some counties the name of Mr. Edwards is under the party emblem, and in other counties the name of Doctor Hunter is under the party emblem. In all of these ballots the name of Mr. White is printed under a device of his own selection, so that when the voter went to

the polls, if he wanted to vote for Mr. White, there was Mr. White's name under his own device; so that Mr. White was not deprived of any votes by reason of not being properly placed upon the ballot himself.

Now this, it is true, was an election where all the voters, regardless of their political affiliations, had the right to vote. It was not a party matter. Every man who was a legal voter had the right to cast his vote. Now, how can you tell when a voter goes to the polls and votes for Mr. Edwards or votes for Doctor Hunter whether he voted for him because he was under the party emblem or whether he voted for him because he wanted to vote for him as an individual? There were other voters besides Republican voters. There were Democrats and Populists and Prohibitionists. How can you distinguish and say there were not voters in other parties who wanted to vote for Doctor Hunter or for Mr. Edwards as an individual? How can you draw the line and say you will throw out these votes cast by voters for a man who appeared on the ballot?

If his name is not on the ballot, the law has provided a blank space where the voter can write the name of the man he wants to vote for. So that there was no deception. The voters were not deceived. And to show you that the voters were not deceived, that each voter voted for the man of his choice, it is clearly demonstrated by the table which I have referred to, and to which I now I refer you, of the vote as cast.

If you will examine the returns you will find that Doctor Hunter carried seven counties, all told. One county out of five where Doctor Hunter's name appeared under the log cabin was carried by Mr. Edwards. One county carried by Doctor Hunter voted a ticket in which Mr. Edwards's name appeared under the log cabin, and in one county where Doctor Hunter's name appeared under the log cabin Mr. Edwards had a majority. Mr. Edwards carried one county out of five where Doctor Hunter's name was under the log cabin. Mr. Edwards carried five counties and Doctor Hunter carried three counties—Monroe, Wayne, and Bell—where Mr. Edwards's name was under the log cabin and Doctor Hunter's name was not printed on the ballot at all.

Now, to make it still clearer, Mr. White carried seven counties, and every one of those seven counties had the name of D. C. Edwards under the log cabin of the official ballot, and not a single one of the counties where Doctor Hunter had his name under the log cabin did Mr. White carry, showing that in those counties where Mr. Edwards had his name under the log cabin the voters preferred Mr. White to him; but no county where the name of Doctor Hunter appeared on the official ballot did Mr. White carry.

Mr. LANDIS. Did Mr. Edwards carry no county where Doctor Hunter's name was on the ballot?

Mr. RAMSEY. One only. Mind you, now, Mr. Edwards had his day in the possession of the party emblem in fourteen counties, and elsewhere, if the voter wanted to vote for him, he had to write his name on the ticket. It was not a question that determined a man's party loyalty, because in every one of these counties carried by Mr. White he was running as an independent. He was not running as the regular nominee. He got his name on the ballot by petition, and was running as an independent, as a Law and Order Republican;

and yet every one of those counties carried by Mr. White is recognized as a Republican county.

The CHAIRMAN. Judge Ramsey, if I may interrupt, in Russell County Mr. Hunter's name was under the Republican device, and Mr. Edwards got only 4 votes and Mr. Hunter 417 votes. In Cumberland County Mr. Hunter got 757 votes and Mr. Edwards did not get one.

Mr. RAMSEY. Yes, sir.

The CHAIRMAN. Would you have us think that if Mr. Edwards's name had been under the log cabin he would still have received no votes at all?

Mr. RAMSEY. That is easily explained, Mr. Chairman.

Mr. TALBOTT. In Pulaski County Hunter gets 1,565 votes.

The CHAIRMAN. Yes, and Edwards 407.

Mr. RAMSEY. That is easily explained, Mr. Chairman. You will notice that Doctor Hunter lives in the lower end of the district. Mr. Edwards lives in the upper end of the district, and the county of Cumberland was Doctor Hunter's home county, where he had lived for forty years, and had practiced medicine among those people, and it shows his popularity there among his people.

Mr. SULLIVAN. He killed off the opposition? [Laughter.]

Mr. RAMSEY. There are still a good many votes cast there.

Now then, in the county of Clay, in the upper end of the district, mind you, Mr. Edwards had his name under the log cabin, yet Doctor Hunter received just one vote in that county, and Mr. White carried the county over Edwards. So in the county of Leslie, Doctor Hunter received but 25 votes, and Mr. Edwards's name was under the log cabin, and yet Mr. White carried that county.

Mr. DUDLEY. Is Leslie a strong Republican county?

Mr. RAMSEY. It is the banner Republican county in the State.

Mr. EDWARDS. There is where I was running under an injunction. [Laughter.]

Mr. RAMSEY. In the county of Perry Doctor Hunter received but 2 votes, and Mr. White carried it. That is another strong Republican county.

The CHAIRMAN. The returns show all through that the man who got his name on the ticket regularly under the device got the votes, and the man who did not get his name on, did not get them.

Mr. RAMSEY. That is exactly what I was calling your attention to, Mr. Chairman. In the county of Perry, in the county of Leslie, in the county of Clay, Mr. Edwards had his name under the device, and Doctor Hunter received 2 votes in Clay, 2 votes in Perry, and 25 in Leslie.

The CHAIRMAN. Mr. White's name was regularly on the ticket?

Mr. RAMSEY. Yes.

The CHAIRMAN. But in Clay County Doctor Hunter's name was not regularly on the ticket, and he got only 2 votes.

Mr. RAMSEY. Yes, sir.

The CHAIRMAN. And Mr. White, whose name was regularly under the device, got 468, and Mr. Edwards got 491, and Doctor Hunter got only 2. Don't you suppose if Doctor Hunter had been under the emblem he would have got more than 2 votes?

Mr. RAMSEY. To meet that proposition I want to call your atten-

tion to the fact that Mr. Edwards was under the log cabin on the ballot in 14 counties, and that he carried only 5 out of the 14. That is shown by these votes here.

The CHAIRMAN. If he had not been under the log cabin he would not have carried any of those, perhaps?

Mr. RAMSEY. Perhaps not.

Mr. CURRIER. Yes, he would have carried one or two.

Mr. RAMSEY. The voters were not deceived, gentlemen. They were making a choice among these men.

Mr. TALBOTT. Do you claim, Mr. Ramsey, that in Pulaski County Doctor Hunter would have got all of those 1,565 votes if he had run under some other shape? Would he have gotten more if Mr. Edwards had been on the ballot as the official candidate in his place?

Mr. RAMSEY. I am willing to concede as a general proposition that it is an advantage to a man to be under the party emblem, if that answers your question.

Mr. TALBOTT. It partially does.

The CHAIRMAN. Do you think we would be justified in assuming—suppose we should find that Doctor Hunter's name was not properly on the ballot under the log cabin, do you think we would be justified in assuming that if his name had not been there he would still have been returned by 160 plurality, or any plurality at all?

Mr. RAMSEY. If the votes were cast for him there, I do not think that under such circumstances he should be deprived of those votes. It is clear here that it was the intention of the voters to vote for him, and I do not see, as I said awhile ago, how you are going to draw the line as to what votes were cast for him as the nominee and what ones were cast for him as an individual.

Mr. SULLIVAN. Do you think these men in their efforts to secure the emblem had more confidence in the carrying power of the emblem than in their own carrying power?

Mr. RAMSEY. Each man seemed not to object to securing the emblem.

Mr. TALBOTT. You did not object yourself?

Mr. RAMSEY. Not at all. I was trying to get under it myself. [Laughter.]

Now, I agree with counsel for Mr. Edwards that the law which has been referred to by Senator Thurston in regard to the use of proxies applies alone to primary elections. Under the election law in Kentucky, section 114 provides how a primary election shall be called by the governing authorities of the political parties. Section 124 prescribes the duties of the district committees in case of a contest. The district committee canvasses the vote, and in case of contest decides who is the legal nominee.

Mr. BYRD. Let me ask you a question right there. As I understand, you have a decision in which the court holds that they can not proceed at the meeting to pass on the returns of a primary election by proxy?

Mr. RAMSEY. Yes, sir.

Mr. BYRD. Why is it that they can proceed by proxy at the meeting called to canvass the returns of a convention—I mean to pass upon them in a judicial capacity—to determine who is the nominee?

Mr. RAMSEY. I will try to answer that question at once. This law, here, provides in case of a contest that the district committee may de-

cide who is the legal nominee. But it has never been decided by any court in the State of Kentucky that proxies can not be used by members of the district committee when they are providing for the calling of a convention. And more than that, there is no statute anywhere in Kentucky that forbids the use of proxies in a convention, or forbids the use of proxies in a primary election. The reason that the courts have held that proxies can not be used by district committees when they are operating under a primary election is because the statute says that such duties shall be imposed upon the district committee, and they are required, before they enter upon those duties, to be sworn, and they act in a judicial capacity because they may hear evidence, and they are to determine between conflicting claims, and they are public officers; and being public officers and having judicial duties to perform, they can not delegate their authority to others.

Mr. BYRD. But, Mr. Ramsey, does not the law force him to settle disputes about nominations?

Mr. RAMSEY. As to conventions, there is no law on the subject. The rules of the Republican party in Kentucky are silent on the subject. You will find by examining these rules that there is no provision contained therein providing, where there is a dispute in the convention as to the nominee, that the district committee shall settle it.

Mr. WEEMS. You say as to that same thing the law is silent. Does not the public-election law provide that a district committee shall determine that matter for the secretary of state?

Mr. BYRD. That is the question. I would like you to answer that.

Mr. RAMSEY. The election law says in the event there are two contending candidates, then the secretary of state shall recognize that candidate who is backed by the constituted authorities of the party in the district.

Mr. WEEMS. Exactly so. They shall determine it for him. Now, is not the statute governing public elections in Kentucky, just described as the one governing party primaries, just as binding in that respect when it calls upon this body of men to perform a judicial act?

Mr. RAMSEY. There is no mention made whatever of a convention. There are no rules prescribed, because this statute does not undertake to fix the governing authority of the party. The governing authority of the party may be one thing to-day and another thing to-morrow. I contend that the members of a political committee are not public officers, and in support of that position—

Mr. BYRD. Please answer this question: What is the difference of the legal effect of the act it has performed in one instance and in the other? That is, when they pass on who is nominated by a primary election and who is nominated by a convention?

Mr. RAMSEY. This difference, that the primary election law is upon the statute books and regulated by statutes, and the duties are prescribed therein. Certain duties are prescribed for the governing authority of a party.

Mr. SULLIVAN. Right there; do you not admit that the Congressional committee, in deciding which of two candidates is entitled to the party emblem, is exercising a judicial function, even though its members are not required to take an oath before they perform their duties?

Mr. RAMSEY. Yes, I admit that the duties required of a district committee in case of a primary election and the duties required of the

district committee in case of a convention are practically the same, if they have to decide between two of the contending claimants.

Mr. SULLIVAN. They are the same in these two particular cases. That is to say, the duties exercised by the Congressional committee in canvassing the returns of a primary election and in deciding which of two candidates is entitled to the party emblem are the same there, judicially, in the two cases.

Mr. RAMSEY. That is the nature of it.

Mr. WEEMS. You say this was a judicial meeting and they could not use proxies. It was the only meeting of the committee, and it decided against you in favor of Mr. Edwards.

Mr. RAMSEY. I say I agree with the counsel for the contestee that this case cited by Mr. White referred to the primary election alone, and not to the convention.

But to come directly to the point, I say that the duties required of the committee when they meet to pass upon a candidate when nominated by a convention would, of course, be the same. Now then, we contend that in that view of the case the district committee meeting which was held at London, and which declared that Mr. D. C. Edwards was the legal nominee, was illegal and void, for this reason: In the first place, that it was not a proper tribunal to pass upon the right of these two claimants, because it was not properly constituted. The proxies they had there, even if they could use proxies, were not proper in form, and in addition to that, that committee was made up not of proper members of the committee, but of partisans of Mr. Edwards.

Now the argument made in behalf of Mr. White is that the meeting held at Junction City on October 5, which called this convention, was illegal. They had nothing to do there except to fix the time and place for calling the convention. They did not have any judicial duties to perform there, but they were simply to fix the time and place of holding the convention. We agree that the meeting called at Junction City, at which the time and place for holding the convention were fixed, was legal, but we do not agree that the action of the district committee that was held at London in November, which held that Mr. Edwards was the nominee, was legal. This is what we claim. They did have judicial duties to perform there. They had to decide between conflicting interests—

Mr. BYRD. From this decision of the supreme court of Kentucky, have we not the right to infer that they intended to decide the general proposition that all election committees when performing ministerial duties can act by proxy, but when performing judicial duties they must be represented in person?

Mr. DUDLEY. That is our position.

Mr. BYRD. When that committee met—I mean the district committee—did they not act in a judicial capacity?

Mr. RAMSEY. I think they did.

Mr. BYRD. Was any proxy represented there?

Mr. RAMSEY. There were ten proxies—

Mr. BYRD. Under that decision of the supreme court, that was not a lawful meeting?

Mr. RAMSEY. Exactly.

Mr. BYRD. Then I do not see any use in discussing it further.

Mr. RAMSEY. Therefore, that action of the committee in declaring

Mr. Edwards the nominee was null and void under that decision of the supreme court.

Mr. BYRD. If the action of that committee was null and void as to Mr. Edwards, did the legally constituted authorities ever declare Mr. Hunter the nominee?

Mr. RAMSEY. The State central committee did.

Mr. BYRD. Is it not admitted by all parties that the State central committee has no jurisdiction of it? Did they not refer it back to the district committee?

Mr. RAMSEY. They did not. They decided that Doctor Hunter was the legal nominee. It was not referred back at all.

Mr. BYRD. Did I not understand yesterday that all parties agreed that the State central committee had no jurisdiction of the matter—that it ought to be decided by the district committee?

Mr. RAMSEY. We did not agree to anything of that kind. We contend that they had no authority, because they so decided twice.

The CHAIRMAN. Who so decided?

Mr. RAMSEY. The State central committee decided twice.

The CHAIRMAN. But if they decided forty times, that would not give them authority if they did not legally have it before.

Mr. RAMSEY. They are legislating for the party.

The CHAIRMAN. But their authority must appear.

Mr. MILLER. Did they ever make a rule for the party which provided for an appeal from the Congressional to the State committee?

Mr. RAMSEY. It has been claimed, and I want to read this authority, because it has not been read to you, that "the State central committee is to be reorganized every four years, as hereinbefore provided, and shall have immediate charge and full control of the political affairs of the Republican party of the State, the collection and disbursement of funds, the assignment of speakers, the distribution of tickets, and generally shall adopt such measures as will promote the success of the Republican party."

The CHAIRMAN. Yes; but they may or may not authorize the State committee to put on officers of the State. Over and above that, the act of assembly says the district committee shall determine who has been nominated for Congress.

Mr. RAMSEY. Exactly. In the absence, we claim, of any statute regulation, the rules and usages of the party should control.

Now, it had been recognized previous to that time by action of the State central committee that an appeal lies from the district committee to the State central committee, and it was not referred back to the district committee by the party authority. The State central committee took it up and heard it, and in answer to Judge Alcorn, Mr. Edwards was there with his counsel. Mr. Cooper, the chairman of that district, was in the hotel there at Louisville, and the papers were called for, and it seemed there was nobody present who was able to produce the papers, and a committee, or, at least, some of the gentlemen present, were sent to the hotel to see the chairman and ask him to come before the committee and bring any papers he had. He was chairman of the district, and they wanted him to be present. He was there. The gentlemen came back and reported that he was about to retire, and it seemed that he did not care to be present at the meeting, and the record shows that he intentionally remained away from the committee.

Now this was the same chairman that presided over the district committee at London. We could not procure the performance of that duty. Why? Because the chairman had not brought any papers there; because the secretary of that board lived 150 miles away from Louisville, and the record in this case shows——

Mr. EDWARDS. I would like permission, Mr. Chairman, to correct Mr. Ramsey there. My attorney was absent, and the record will show this committee that Mr. Ramsey and Dr. Hunter were taking an appeal. They were appealing to the district committee, and they never applied to the district committee at London for a copy of the record, and they went down and appeared before the State committee without any papers, because they had made no effort to get any. And this committee knows what the rule is for appellant and appellee in furnishing a record.

Mr. RAMSEY. This record shows that Mr. Edwards was in the city of Louisville on the 4th day of November and sent a telegram to C. N. Provence, the secretary of that district committee, to mail to him at Willard's Hotel, in Louisville, the minutes and records of that meeting. If they had been mailed they would have been received in time to be used by the committee.

Mr. C. O. Reynolds, who was a member of that State committee, said at that time, at the Willard's Hotel, Mr. Edwards was reading to him certain papers he had in his possession bearing on the contest, and he remarked at the meeting of the State central committee that that was true, and the State central committee was not able to get the original papers that had been before the district committee at London.

But this is what was done in the suit that had been filed by Mr. Edwards in a certain court: Affidavits had been filed in support of his contention that he was the nominee. Mr. Provence, who gives his deposition in the case of Edwards *v.* Hunter, shows that at that meeting of the committee certain affidavits were read in behalf of Doctor Hunter, and certain affidavits were read in behalf of Mr. Edwards. These affidavits, I think a part of them, were the same affidavits that were used in the suit. Doctor Hunter happened to have at Louisville a copy of these affidavits, and they were the affidavits produced and read before that State central committee. And the question was asked there, and the other side declined to offer any evidence, and the case was passed upon, as shown by the resolution adopted there, after full hearing of the case. That is the fact as shown by this record.

Mr. MILLER. What testimony is there in the record, Mr. Ramsey, to show that there was any evidence introduced before the State central committee?

Mr. RAMSEY. The testimony of C. O. Reynolds shows that affidavits were read.

Mr. MILLER. In behalf of Doctor Hunter?

Mr. RAMSEY. Yes; and the resolution itself shows that they heard evidence.

Mr. MILLER. There is not anything in the record, as I recall now—and I read it carefully—there was not any evidence introduced on the part of Mr. Edwards. But the record shows that Mr. Edwards was requested, I think, to present certain affidavits or records, but he declined to present any.

Mr. DUDLEY. Mr. Cooper was.

Mr. MILLER. Yes; Mr. Cooper, representing Mr. Edwards.

Mr. RAMSEY. He refused to produce any papers whatever. Mr. Edwards, it is true, did not himself offer any evidence before that committee. But, as I said, he presented before that committee affidavits in his behalf that he had copies of, that he used in the suit there in behalf of his claim for the nomination. He read the affidavits he had filed in the suit. He had copies of them there. That is all we could get.

Now, then, Mr. Chairman—

The CHAIRMAN. Just one moment, Mr. Ramsey. You have consumed thirty-five minutes. What do you wish done, gentlemen, with regard to the continuation of the hearing? It is now after 12 o'clock.

Mr. BYRD. Let us go through with it.

The CHAIRMAN. How much more time do you desire?

Mr. RAMSEY. I shall want but little more time.

Mr. MILLER. Fix the time.

Mr. BYRD. I move that his time be extended ten minutes.

The CHAIRMAN. It is moved and seconded that the time of counsel for Mr. Hunter be extended ten minutes.

Carried.

Mr. RAMSEY (resuming). Now I understood on yesterday that Senator Thurston claimed that it was impossible to tell from the record as to how many delegate votes there were in each of these conventions at Middlesboro and London. I have here a table, gentlemen of the committee, that shows the counties represented in each of these two conventions. At Middlesboro there were represented 276 delegate votes.

Mr. MILLER. Judge Ramsey, there is just exactly the difficulty we have in this case, so far as the testimony of both sides is concerned; that, so far as Hunter and Edwards are concerned, certain counties, an indefinite number, were represented. Let us have some record that some definite person represented those counties.

Mr. TALBOTT. Have you a certified list of the delegates?

Mr. RAMSEY. No, sir. It is impossible to give you the names of the delegates.

Mr. MILLER. There may have been only twenty-five people there.

Mr. RAMSEY. In the Middlesboro convention—I am referring now to the convention that was held after the other convention adjourned—there were 276 delegates. Not represented, Leslie, Laurel, Whitley, 3. That makes 70 delegates.

Mr. THURSTON. Was that the Hunter convention?

Mr. RAMSEY. Yes, sir. That makes a total of 346.

Now at the London convention, mind you, there were, as shown by Chairman Sharp, 261 delegates. It is true Mr. Edwards claims that he was nominated by 278. But Mr. Sharp says there were 261 delegates. How many counties were represented? it was asked. Six counties were not represented at London at all, namely, Adair, Clinton, Monroe, Cumberland, Russell, and Wayne. Of course there could not have been 261 legal delegates at London and 276 legal delegates at Middlesboro. [Laughter.] There is nothing to show the particular men who cast the vote at London and the particular men who cast the vote at Middlesboro. But it is clear that no delegate from 6 counties went from Middlesboro to London, and it is also clear that the men who were casting the votes in the convention at Middles-

boro are not the men who cast the vote in the convention at London. In other words, the chairmen who were casting the votes in Middlesboro did not go to London to cast their votes. As an instance of that, I refer you to Leslie County. There were but 3 delegates at Middlesboro from the county of Leslie. There were 2, Ootens and a Mr. Lewis.

Mr. MILLER. There is nothing in the record to show that.

Mr. RAMSEY. Yes, it shows who the 3 delegates from Leslie County were. I brought it out in the testimony. It shows that Mr. Ootens and his brother failed to go to London, but Mr. Lewis went to London, and Mr. Lewis cast the entire vote of Leslie County when he went there for Mr. Edwards. That is shown by this record. You will find, too, that although Whitley County, when it was represented at Middlesboro, had 76 delegate votes, at the London convention there were but 2 delegates, showing you, by the testimony of Mr. Yadon, that there were 647 accounted for at the London convention, and according to the testimony of Mr. Rice, 452 accounted for at the Middlesboro convention.

The CHAIRMAN. You will reproduce this in your brief, will you?

Mr. RAMSEY. Yes, I will do so in my remarks. I will file this tabulation:

Counties participating in the London convention, October 19, 1903:		Counties represented in the Middlesboro convention:	
Letcher	11	Adair	17
Perry	10	Bell	21
Harlan	16	Clay	19
Bell	21	Casey	18
Knox	26	Clinton	11
Whitley	36	Cumberland	12
Pulaski	41	Harlan	16
Casey	18	Jackson	18
Laurel	22	Knox	26
Jackson	18	Letcher	11
Owsley	11	Monroe	17
Clay	19	Owsley	11
Leslie	12	Perry	10
	261	Pulaski	41
Not participating:		Russell	12
Adair	17	Wayne	16
Clinton	11		277
Cumberland	12	Not represented:	
Monroe	17	Leslie	12
Russell	12	Laurel	22
Wayne	16	Whitley	36
	85		70
	261		276
	85		70
	346		346
By testimony of Yadon	647	By testimony of Rice	452

Mr. RAMSEY (continuing). We contend that in the absence of a legal nomination, after all, it is the election which controls, and that if a man has been voted for and elected by the people, and it is shown that there is no deception, we think the committee ought to give expression to the will of the voters.

It is shown here that when the returns went before the State board

of election commissioners in Kentucky, composed of two Democrats and one Republican, the commissioners were unanimous in awarding to Doctor Hunter the certificate of election, because he had received the highest number of votes.

Mr. CALHOUN. Their duty is simply ministerial.

Mr. RAMSEY. Certainly, ministerial. Doctor Hunter was awarded the certificate of election unanimously. Now, there has been some reference made here in the brief to Doctor Hunter in reference to his personal and official character. We believe it but just and right that we should make some response to it. We want to say—

Mr. SULLIVAN. I don't think any committeeman considers it necessary.

Mr. MILLER. No; that question will not be considered at all in committee.

The CHAIRMAN. No. It is not necessary for you to speak of that.

Mr. RAMSEY. I simply want to say, gentlemen of the committee, that Doctor Hunter has been honored by his people on two or three different occasions by their giving him a seat in the State legislature. He was honored with the caucus nomination of his party as the candidate of the Republican party for the United States Senate, and would have been elected had it not been for party treachery—on account of four members of the caucus who bolted the nomination. He was chairman of the Republican State campaign committee in 1895, and had charge of a campaign which resulted in bringing Kentucky into the Republican column for the first time. And he was instrumental in bringing about success to the party in 1896, when the vote of that State was cast for Mr. McKinley. And in spite of the fact that his personal and political enemies have heaped abuse and slander upon him, all those aspersions, we think, have been fully met by the fact that he was recognized as being sound and in line with the policies of the Republican party, and worthy to be appointed, as he was appointed by President McKinley, to the important position of minister to Guatemala, and confirmed by the Republican Senate to that high office; and by the further fact that since that time he has been honored by the people of his district and received the highest number of votes as their Representative in the Fifty-eighth Congress of the United States.

With this record, with the certificate of election awarded to him unanimously by the action of the proper official authority, and with the fact appearing here before this committee that the voters have expressed their choice, as indicated by the returns here, this committee, we think, would not be authorized under the facts of this case to say that he shall not be permitted to represent the people of that district.

If you repudiate the action of that district committee meeting held in London on the night of November 7, which we contend was nothing more than a farce, a travesty on justice, not a proper tribunal to decide such questions, then the title of Mr. Edwards to that position falls. He failed in the court to show that he was the nominee. He failed before the secretary of state to show that he was the nominee. He failed before the highest governing authority of the party, the State central committee, to show that he was the legal nominee. He failed to show before the people, the voters at the polls, that he was the legal nominee, because the majority of the votes were cast in

favor of the contestee, Dr. Godfrey W. Hunter, in this case; so that we feel, with these facts before you, and with the law as cited here, and in the light of this record, that Doctor Hunter is entitled to the seat which he now holds.

Gentlemen, I thank the committee.

**SUPPLEMENTAL ARGUMENT OF GEN. W. W. DUDLEY, OF COUNSEL
FOR HON. GODFREY W. HUNTER, CONTESTEE.**

Mr. DUDLEY. Will the committee indulge me five minutes? I want to address myself to the White case for five minutes only.

The CHAIRMAN. If there is no objection, you may proceed.

Mr. DUDLEY. I thank the committee for that indulgence. It seems to me that the White contest is based very largely upon the legal defects in the committee meeting at Junction City on October 5, and to that I wish to address myself and to nothing else.

The fact appears to be with regard to that meeting that the meeting itself was, for all we know from the records, properly called by the chairman of the district committee. At that meeting appeared eight of the actual members of the committee in person. For the remainder of the membership of the committee who were not present proxies were presented and admitted by the eight members present, and those constituted the committee.

The duty of that committee and the object for which they were called was single, and that was to call the necessary convention to bring about a nomination of a candidate for Congress in the Eleventh Congressional district of Kentucky, to be held at that special election. All other provisions of the law which ordinarily would have applied, had there been time sufficient, had to be waived from the necessities of the case. There was not sufficient time for the thirty days' notice, and all that, to bring the case within the primary election law. Therefore it had to be a convention nomination—a nomination by a convention to be held by delegates chosen by the people.

Now that committee went ahead and prescribed the time and the place where the meeting of the convention to nominate a candidate for Congress should be held, namely, at Middlesboro, on October 17. They also prescribed that the call for that convention should notify the chairmen of the different Republican committees in the counties constituting the district to hold their meetings on October 15, and to select their delegates to come to the convention at Middlesboro.

Now, suppose it to be true that, as a general proposition, it is accepted in the State of Kentucky by the Republican party that at meetings of the committee proxies may be held. It may be so inferred, it seems to me, from the fact that the State central committee provides that meetings of the committee may be held by members holding proxies. At any rate we have there a committee which met, and at which are present eight at least of the nineteen men who are members of that committee, and enough proxies to give a quorum, at least, of the committee. They were there, if not *de jure*, then *de facto*, and they discharged duties necessary to the machinery of a proper nomination for Congress.

Now, it has been well settled, and it is to-day the well-settled law of Congress, even in election matters, that where officers who have to be sworn are not sworn, or where improper persons appear and

hold an election, and no fraud is charged, they are considered to be officers de facto, and their acts are to be given full force and effect unless fraud is charged against their action. Now, I say the law of this land is to do that where ministerial duties only are to be performed, and that where an effect is to be given for the benefit of the whole people to some provisions of a statute, and officers appear and carry on the machinery of that election substantially, and it shall appear that no fraud has been done, and the people have not been deprived of their elective franchise—I say that in such case you will hold, and all courts will hold, that officers de facto who perform those duties shall stand, and that their acts shall stand.

The case is different, I think, both in morals and in law, when the committee comes together for the purpose of passing on the claims of rival candidates, in taking up, in a quasi-judicial manner at least, upon evidence presented, the claims of different candidates, and to determine judicially what that shall be. Like all judicial proceedings we hold their ipso facto to be appealable, and necessarily so, to a higher authority, if one exists.

That is all I wish to say, gentlemen.

FINAL ARGUMENT OF HON. JOHN M. THURSTON, OF COUNSEL FOR JOHN D. WHITE, ESQ., ONE OF THE CONTESTANTS.

Mr. THURSTON. Gentlemen of the committee, I shall detain you only a few moments. I shall not attempt to reargue anything that I have previously presented.

In reply to what has been said here about the two conventions, or alleged conventions, one at Middlesboro and one at London, I do not see how this committee can ever find that either of them was a real convention, having present a majority of delegates authorized to act, unless we have for the first time since Christ walked the shores of the Lake of Galilee, preaching peace and good will to men, established an era of miracles.

There were 346 delegates, all told, to sit in that convention. About 270 of them, as near as we can tell, were counted by each one of the two other succeeding conventions. How many were real, how many were fakes, nobody knows. [Laughter.] The very silence of the record is strong proof that somebody was afraid ever to have it remain on record as to what delegates were present and acted at either one of those so-called conventions. Certainly there was a multiplication of delegates at the two conventions as wonderful as the miracles of the loaves and fishes. [Laughter.] And I have no doubt if it had been necessary for either candidate before those two conventions to multiply delegates over again, they would have cheerfully proceeded to do it. [Laughter.]

On the matter of the power of the proxy to sit as a member of a district committee, referring to the case of *White v. Boreing*, which has been cited, the report in that case was presented on March 29, 1900. The election that had been held and which was under consideration in that contest had taken place a year before that time. Since that election was held and that report presented and adopted in Congress there has been a new election law passed in the State of Kentucky, which new election law is the one that has been construed by the highest judicial officers of that State.

Mr. SULLIVAN. I did not understand it so. I wanted to get that straight. I thought the primary election law was enacted in 1892.

Mr. CALHOUN. That was the original act. That led up to the unfortunate troubles we had in the State, and then both parties got together and passed a law in the year 1900 which was meant to eliminate such possibilities of corruption from the State, and these cases cited here came under that act of 1900.

Mr. ALCORN. May I interrupt the gentleman just a moment?

Mr. THURSTON. So far as I am concerned, you may.

Mr. ALCORN. The primary election law of 1892-93 has not been amended.

Mr. RAMSEY. Is it not a fact, that although—

The CHAIRMAN. One moment. Of whom are you asking the question?

Mr. RAMSEY. I am asking it with reference to the statement—

The CHAIRMAN. Of whom are you asking it?

Mr. RAMSEY. Of Mr. Calhoun.

The CHAIRMAN. You will have to have the consent of the committee to indulge in conversation with anybody while Senator Thurston is on the floor.

Mr. RAMSEY. I simply wanted to ask a question on the statement made.

The CHAIRMAN. But not out of Senator Thurston's time.

Mr. RAMSEY. Is it not a fact, Captain, that although some changes were made in the election law at the time you state, 1900, none were made with reference to primaries on this point?

Mr. CALHOUN. I will state, in answer to that, that we have here, on page 76, a compilation of the election laws of Kentucky in regard to primary elections, etc.

The CHAIRMAN. Will you leave that pamphlet with us?

Mr. CALHOUN. Yes.

Mr. SULLIVAN. What other section besides 76 was amended?

Mr. CALHOUN. 127—section 127 of this pamphlet, the section beginning on page 76.

Mr. SULLIVAN. You think there are no other amendments besides those on page 76 and following?

Mr. CALHOUN. No.

The CHAIRMAN. We will hunt that up ourselves. Senator Thurston, you may proceed.

Mr. THURSTON (resuming). Whatever may have been the decision in the case of *White v. Boreing*, I do not apprehend that, under the well-settled rules of law, that decision would be adhered to in any other case if in the meantime the supreme court, the judicial authority of the State where the case arose, has construed those laws in a different way. It is the generally accepted rule that State authorities must be followed in passing upon all questions that arise under State laws, and it is regarded as settled that Federal authorities, both the authorities of Congress and of the Supreme Court of the United States, will not question the construction of statutes placed upon those statutes by the Supreme Court or judicial authority of that State.

Since the case of *White v. Boreing*, the court of appeals of Kentucky has, I believe, placed a construction upon their statute and upon the rules of the Republican party, which are adopted by the

statute as a part of the law of Kentucky, which construction is entirely at variance with the decisions reached in the case of *White v. Boreing*. Political organizations and political committees have been recognized by the statute laws of Kentucky as having a certain official existence. Before the enactment of these Kentucky laws these organizations were not recognized as having any official standing outside the councils of the party that made them. But it will clearly appear under the general election law of the State of Kentucky, in the latter part of section 11, that the legislature recognizes the existence of a governing political body—a party body—in each of the several political divisions or subdivisions of the State, and that they have recognized in that statute the fact that in each Congressional district there is a body, which is the district committee, that is the governing authority of the party.

It is suggested here that that body, when constituted, can act at sometimes without a majority or a quorum of its membership, while it can not so act at other times; that it can at some times—it may at some times—consist of regular members and proxies, and at other times it can not. I think that proposition can not and ought not be entertained, and I do not think it is possible to entertain it.

Under the decisions of the courts of Kentucky it is suggested here that certain of its duties are nominal, and certain of them judicial, as imposed upon them by law and party regulations, and that as to ministerial duties members of the committee can abdicate the performance of their duty in favor of persons whom they may designate, not whom the party may select.

There is something more or less important about the membership of a committee that is called on to act in any case. Members of this committee are selected by the party through the party machinery, but a proxy is selected simply by the designation of one member of the party because he has been intrusted with power by his party, and that intrusting of power must necessarily be largely personal, and because of the confidence which the party organization places in a man of his own selection.

MR. SULLIVAN. When they are selected no one can tell whether they shall exercise authority over primaries or over conventions?

MR. THURSTON. No; I am about to proceed to that. I do not agree with the suggestion here, that all the functions that were exercised by this committee when they assembled at Junction City were ministerial. There was the widest latitude of political discretion to be exercised by that committee when it met there. You can not say that because this committee met at a time when it was no longer possible to decide whether a primary could be held or not it was constituted in any other way than it would have been constituted if there had been time to pass upon that question. I insist that when that committee meet it has certain questions of discretion to exercise that rise far above all mere matter of ministerial performance of specific duty.

It must determine, first, will the party proceed to place in nomination a ticket? There is a wide, and a serious, and an important discretion to be exercised.

They may say, "We will place no ticket in the field." If they decide to place no ticket in the field, they must determine, Shall we call a primary or not? There is a wide latitude for the exercise of discretion. If they say not, or the conditions or the time is such that

a primary can not be held, then they must determine whether they shall make this nomination by convention or by petition of members of the party. Shall we proceed to call a convention, or shall we authorize the circulation of a party petition for nominees or candidates on the ticket? There is a field for the exercise of wide discretion, judicial in its character.

Then, further, they must exercise a discretion as to the time. They must exercise discretion as to that. They must determine what is best for the honest expression of the will of the people. And they must determine where the convention will be held. That itself is a very important question, which I think the evidence fully demonstrates in this case. They must determine whether the delegates to that convention shall be selected at primaries, in mass convention, or in conventions otherwise called and assembled in the respective counties, and as to all these things there opens a wide field of discretionary exercise of judgment and of power.

I think the court of appeals of Kentucky has gone much farther than to say that the proxy system does not exist under the law and under the party law in the State of Kentucky with respect to the action of these district committees. In the case of *Mason v. Byrley*, which we have cited in our brief, and a portion of these opinions embodied therein, the court in passing upon this question say:

Many duties are required to be performed by the committee or governing authority of the party under the article.

That is, the article of the legislature.

MR. TALBOTT. Is there any form of oath that a committeeman should take prescribed in the statutes?

MR. THURSTON. No, sir; there is no form of oath, and it may be questioned whether in all their general duties they are required to take this oath. That may be questioned, but what I especially desire to do is to call your attention to what the court says in regard to party law with reference to proxies.

The duties required of the district committee in the matter of the calling and holding the primary, as well as in ascertaining and declaring the result, are defined by the statute and we do not find in the statute or in the printed rules of the Republican party organization of the State, any provision allowing members of the district committee the power to delegate to others, by proxy or otherwise, the performance of the duties with which they alone seem to be intrusted by the statute.

Of course the court in this case is speaking to the question of their duties under the primary law. But the court holds that they did not find any authority for intrusting the duties of this committee to any other persons than those named by the party organization.

MR. SULLIVAN. And the court, notwithstanding the answer of Mr. Ramsey, made no distinction between ministerial and judicial duties, but solely on the ground that they were public officers.

MR. THURSTON. Yes, and as I take it, upon the further ground that in the absence of specific law authorizing proxies—and the court says there is no such—that there is none and there can be no authority, except as it may rise out of the statute or out of a party law. And in the absence of a party law, in a case of this kind, where members of such a committee are selected because of the personal confidence of members of their party in them individually, they can not delegate the performance of functions intrusted to them, ministerial or judicial, unless authorized by statute or party law. And in the

absence of party law it can not be done. I believe that is all, gentlemen of the committee.

The CHAIRMAN. It occurs to me to ask two questions. They may have been answered already. We may find the answers readily in the law. One is, whether in voting for candidates of his party on the part of a person desiring to vote the straight ticket, Democratic or Republican, there is any method of making one mark on the ballot which carries all the candidates of that party?

Mr. RAMSEY. Yes; by stamping the cross mark in the circle under the party device. That votes the whole ticket. It is so arranged, Mr. Chairman, that there is a party ticket placed under the party device. Then after each name or opposite each name on the party ticket a square is provided, and then under each name is a blank line and a square at the end of that blank line, intended to be the place to receive such other name as the voter may desire to vote for by writing the name in. Now, by stamping the cross mark in the circle under the party emblem that votes for all members on the ticket, unless there is a mark showing on the ballot, in the proper place elsewhere, that he desires to vote for some other candidate than appears on the party ticket.

Mr. MILLER. Then he writes the name in?

Mr. ALCORN. The statute itself explains that minutely and fully.

The CHAIRMAN. I suppose it does. Is there in this record any evidence showing—and that is the second question I wished to ask—the number of votes cast for Mr. Edwards or for Mr. Hunter, for either or both of them, by simply stamping a single mark under the party designation? Or can we ascertain how many were voted by mark in a square opposite the name of each or either of them?

Mr. RAMSEY. That it is impossible to tell, because it is a secret and official ballot and we have not had access to the ballot. The ballot boxes were not opened.

Mr. WHITE. Allow me to suggest that in my brief, prepared by Mr. Calhoun, there are figures designed to bring out this very phase of evidence—figures showing the counties which Doctor Hunter carried and the counties which Mr. Edwards carried.

The CHAIRMAN. Take the first county, Clinton, where Doctor Hunter's name was placed under the Republican device, and where he received 512 votes. We do not know how many of those votes were cast for him by simply stamping the cross under the party designation, or how many were cast by marking a cross in the square opposite his name, or how many were written in the ballot.

Mr. RAMSEY. It is impossible to say, Mr. Chairman—

Mr. WHITE. Except in the counties where Doctor Hunter's name was printed he got most of the votes. In the counties where his name was not printed he got three of them by writing.

The CHAIRMAN. Are these ballots still in existence?

Mr. ALCORN. No, sir; the law provides they shall be preserved six months and then destroyed.

Mr. RAMSEY. The law provides they shall be preserved six months, and I am unable to say whether they have been preserved or not. We have stated in the notice of contest that we desired a recount of these ballots.

The CHAIRMAN. Did either party take any action to have such recount?

Mr. RAMSEY. No; there was no action that we could take that I know of.

Mr. JESSE. We could not do it under our law in Kentucky. This committee here could do it, but no other power in Kentucky could authorize a recount.

The CHAIRMAN. Did any party take any steps to secure the ballots, or have them impounded or secured for the use of the committee?

Mr. JESSE. No, sir.

Mr. RAMSEY. We gave notice that we would ask the committee to have those ballots recounted, especially in certain counties. We know of no way by which we could ascertain about the ballots by any proceedings in court, because the courts decided they had no jurisdiction in the case.

The CHAIRMAN. Did you subpoena those having the ballots in charge?

Mr. RAMSEY. There is a provision in the statute against opening the ballots.

The CHAIRMAN. Did you call upon the parties to produce the ballot boxes open or sealed?

Mr. RAMSEY. We did not. We were not contesting.

The CHAIRMAN. I mean, did anybody? Nobody took any step in that connection?

Mr. RAMSEY. Not at all.

The CHAIRMAN. One more question: At this meeting of the district committee which determined that Mr. Edwards had been nominated—at which meeting we are told there were less than a quorum of regular members present, the others being represented by proxies—was there any protest made at that meeting against the use of proxies?

Mr. ALCORN. None.

Mr. MILLER. An appeal was taken.

Mr. ALCORN. An appeal was taken from the result.

The CHAIRMAN. Was the appeal taken at that meeting?

Mr. ALCORN. Yes.

The CHAIRMAN. On what page is that appeal?

Mr. RAMSEY. I refer you, Mr. Chairman, in answer to that question, to page 291 of the record in the case of White v. Hunter, which shows the notice given of the appeal, and the ground of objection to the action of the committee—the protest which was filed there to the action of the committee, setting out the reasons; that there was an absence of sufficient notice; that the members present were partisans and were not the proper persons to pass upon the question, and also that this objection was taken; that even if the district committee had the right to determine this question, it was too late to determine it, and that they ought to have acted before the time within which the secretary of state was required to certify.

The CHAIRMAN. Did he make any objection on the ground of the use of proxies?

Mr. RAMSEY. There are no objections made in this protest to the use of proxies.

Mr. THURSTON. Evidently neither side was in a position to raise that point, and Mr. White could not appear there as a party in interest.

Just one further suggestion, partially suggested by the question of the Chairman: I think the proposition I made on yesterday is abso-

lutely unanswerable when it comes to the determination of the intention of the voter under the Australian ballot law. It will be found, in a review of every election, that a very great percentage of all the party ballots cast are cast substantially in the same number for all the various names upon the ticket—80, or 90, or 95 per cent in all elections; and it holds good in this contest here, in most of the counties. The votes appear to have been cast under the party device, evidently with an intention on the part of the voter to vote for the party candidates.

The suggestion was made that Mr. White did not receive but 4,000 and some odd votes. But, gentlemen, suppose there had been no other political device, and no candidate of the Republican party on the ballot, as we say there should not have been, what man can say that Doctor Edwards might not have received as great a vote as the combined vote of these two other gentlemen? You can not determine that under the Australian ballot system. The law provides what shall be done. If a name is not properly on the ballot, it will eventually become a settled judicial opinion in this country, in my judgment, that that space must then be considered a blank space, and, in having a majority, he is the elected party.

Mr. TALBOTT. What are the five counties where Mr. Edwards's name is not on the official ballot?

Mr. ALCORN. Clinton, Cumberland, Russell, Harlan, and Pulaski.

Mr. WEEMS. Mr. Chairman, I would like to ask a question: Is there any record in the White and Hunter case, and in the other, for that matter—is there any controversy whatever about the legality of any one of those steps by which Mr. White got on the ticket?

Mr. THURSTON. None.

Mr. WEEMS. Is there any controversy about the legality of any votes he got anywhere?

Mr. THURSTON. There is none.

Mr. WEEMS. So that, if we should adopt your principle and exclude all votes for Hunter and for Edwards, we would be face to face with the fact that here was a man the legality of whose candidacy nobody questioned?

Mr. THURSTON. He received all the legal votes that were cast—all but some few scattering votes.

Mr. ALCORN. Mr. Chairman, before the committee adjourns I would like to ask what we may expect as to the appearance of the brief of the contest of Hunter—the brief of Hunter, the contestee. I do not know whether I want to file a reply brief or not.

The CHAIRMAN. After you have read it, and you find that you want to file a reply, you can, if you want.

Before you go, gentlemen, the stenographer would be glad if you would let him have the books and papers from which you have quoted, so as to secure accuracy and verification of quotations.

Mr. MILLER. I now move that the committee go into executive session.

Mr. TALBOTT. I second the motion.

Carried.

Thereupon, at 1 o'clock p. m., the hearing of argument was concluded, and the committee went into executive session.

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.**

SUBCOMMITTEE

ON THE

LIGHT-HOUSE ESTABLISHMENT.

Hon. JAMES R. MANN, Chairman.

Hon. CHARLES H. BURKE.

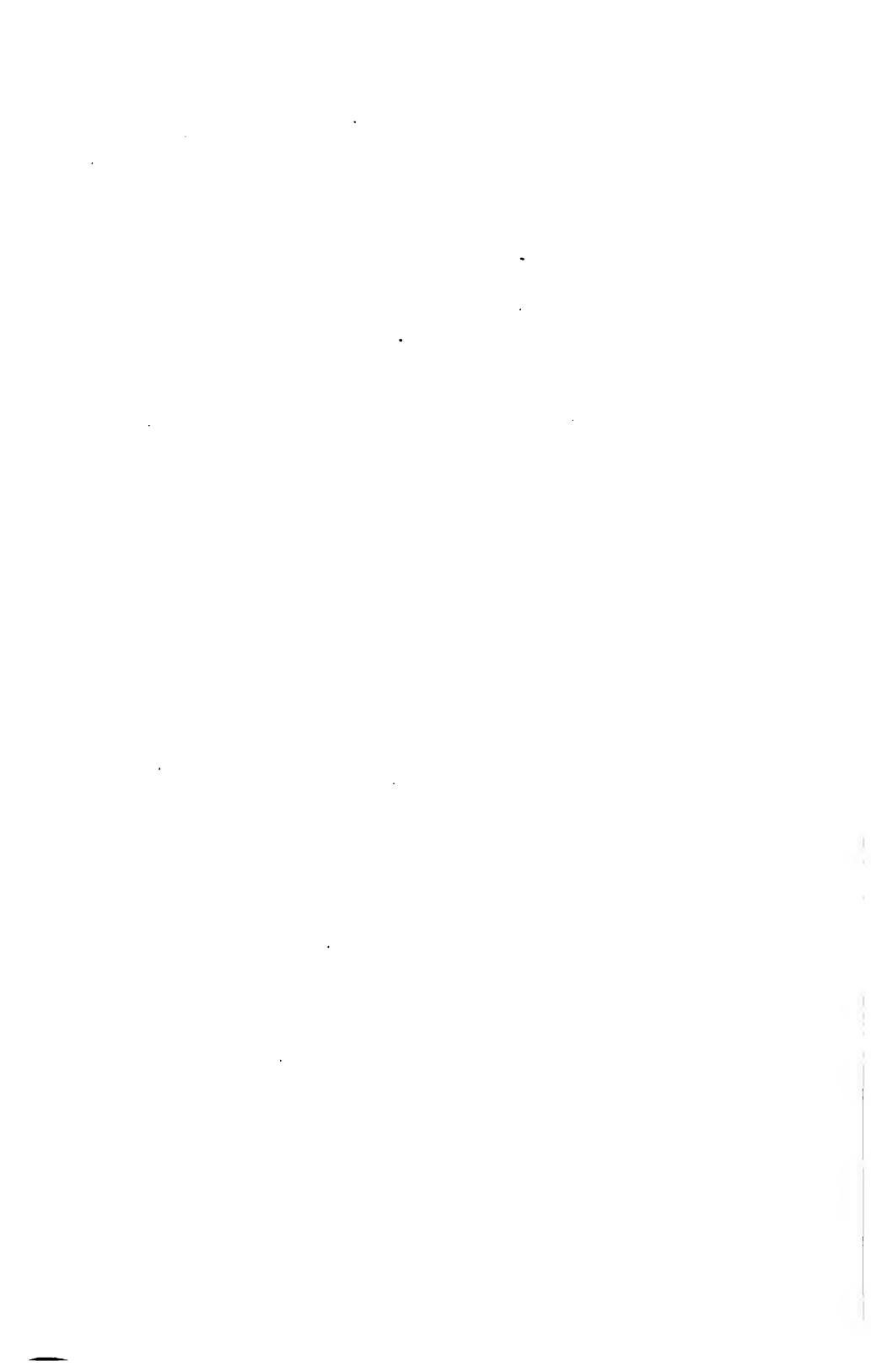
Hon. THOMAS B. KYLE.

Hon. WILLIAM C. ADAMSON.

Hon. DORSEY W. SHACKLEFORD.

1905.

**WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1905.**



LIGHT-HOUSE ESTABLISHMENT.

The subcommittee met at 10 o'clock a. m., Monday, February 13, 1905, Hon. James R. Mann in the chair.

STATEMENT OF COL. DANIEL W. LOCKWOOD, ENGINEER SECRETARY, LIGHT-HOUSE BOARD.

The CHAIRMAN. This is a meeting of the subcommittee of the Committee on Interstate and Foreign Commerce, to which has been referred a number of House and Senate bills in regard to the Light-House Establishment. Will you, for the information of the members of the House, and so as to put it into the record, tell us what the Light-House Establishment covers and how the Light-House Board is composed?

Colonel LOCKWOOD. You mean the organization of the Board?

The CHAIRMAN. As to the membership of the Board.

Colonel LOCKWOOD. The Light-House Board consists of three naval officers, three engineer officers of the Army, and two civilians, and the Secretary of the Department of Commerce and Labor is the president *ex officio*. The Board operates under a chairman that it elects itself.

The CHAIRMAN. Who is the present chairman?

Colonel LOCKWOOD. Rear-Admiral Lamberton.

The CHAIRMAN. Are you the military secretary now?

Colonel LOCKWOOD. Yes, sir; I am the engineer secretary. That is the technical name. Capt. Uriel Sebree is the naval secretary.

The coast line of the United States, the Great Lakes, Porto Rico, the Hawaiian Islands, and Guantanamo, and recently the Midway Islands, are under the jurisdiction of the Light-House Board so far as aids to navigation are concerned. The large rivers, like the Mississippi, the Ohio, the Tennessee, and Cumberland, and a good many other streams that I can not recall, are also included under the appropriation for post lights, temporary aids to navigation that are moving as the channel varies in the stream. The coast line of the United States I refer to also includes Alaska. It takes in all the territory in this country.

The CHAIRMAN. As well as the Great Lakes?

Colonel LOCKWOOD. Yes, sir; that is a general statement of the conditions.

The CHAIRMAN. How many light-house districts are there?

Colonel LOCKWOOD. There are 16 light-house districts.

The CHAIRMAN. Do they include Alaska, the Hawaiian Islands, and Porto Rico?

Colonel LOCKWOOD. Alaska is included in the Thirteenth district, the headquarters of which are at Portland, Oreg. The Hawaiian

Islands are in the Twelfth district, with headquarters at San Francisco, and Porto Rico is in the Third district, with headquarters at New York.

The CHAIRMAN. Can you give us the headquarters of the different districts so as to locate them?

Colonel LOCKWOOD. Yes, sir. The First and Second districts have their headquarters of the engineer at Boston, with one inspector for the First district at Portland, Me., and one inspector at Boston. There is an inspector for each district, and only one engineer for the two districts. The Third district headquarters are at Tompkinsville, Staten Island. The Fourth district headquarters are at Philadelphia; the Fifth district headquarters are at Baltimore; the Sixth district headquarters are at Charleston, S. C.; the Seventh and Eighth districts have one engineer, whose headquarters are at Mobile, and one inspector is at Key West and the other at New Orleans.

The Ninth district has its engineer headquarters at Milwaukee and the inspector headquarters at Chicago. That is owing to the fact that the engineering officer has duties other than light-house duty. The Tenth district headquarters of both district officers are at Buffalo. The Eleventh district headquarters of both officers are at Detroit. The Twelfth district headquarters are at San Francisco, and the Thirteenth district headquarters are at Portland, Oreg. The Fourteenth district has headquarters at Cincinnati. The Fifteenth district has headquarters at St. Louis, and the Sixteenth district has headquarters at Memphis.

The duty of the engineer officer in the river districts is merely nominal. There is practically no work for him, as the lights are merely temporary post lights that are used to mark the channel and are shifted as it changes.

The CHAIRMAN. Do they have an engineer officer on duty in the river districts?

Colonel LOCKWOOD. Some engineer officer who has other engineering duties in that locality is named as the engineer.

The CHAIRMAN. I sent to you a number of House and Senate bills relating to new propositions for the light-house establishment. Do you happen to have those bills arranged by districts or anything of that kind?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. It does not make any particular difference which bill we consider first.

Colonel LOCKWOOD. I can tell what districts they are in the moment they are mentioned.

The CHAIRMAN. What our committee wish to get at is really not only the degree of necessity for the establishment of the various structures, lights, etc., provided for in these bills, but also the comparative necessity. You understand that Congress at present is not running exactly under a full head of steam so far as the expenditure of money is concerned. We are compelled, in view of the deficit, to be somewhat economical, and for that reason we wish to provide for those things that are absolutely necessary, but do not wish to provide for those things which can, without material injury to the service, remain for another year.

The first proposition I have here is Senate Act No. 3983, to provide for additional employees' quarters at the Robinson Point post-light

station, State of Washington. The following report has been made in reference to that matter:

The Committee on Commerce, to whom was referred the bill (S. 3983) providing for additional employees' quarters at the Robinson Point post-light station, State of Washington, having considered same, report thereon with a recommendation that it pass without amendment.

The bill has the approval of the Commerce and Labor Department, as will appear by the following extract from the annual report of the Light-House Board for 1903:

Robinson Point post light, Washington.—The following recommendation, made in the Board's last six annual reports, is renewed:

"The dwelling at this station is arranged for the accommodation of one family, but as there are two keepers employed the quarters are insufficient and a new building is urgently needed. It is estimated that a suitable building can be erected for not exceeding \$5,000, and it is recommended that an appropriation of that amount be made therefor."

Colonel LOCKWOOD. I would like to make a general statement with regard to his subject of quarters. The people are being housed, but in a great many instances the quarters are absolutely insufficient. That is owing to the fact that in many cases since the original quarters were constructed fog signals have been added, and there is not room for them.

The CHAIRMAN. That is where the provision originally made there was only one light keeper?

Colonel LOCKWOOD. Or possibly two.

The CHAIRMAN. And the building was then provided upon that basis?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. And since then where there were only two there are now more, owing to the fog-signal keepers?

Colonel LOCKWOOD. Yes, sir. There were two originally in some instances, and now the fog signal necessitates another keeper. I think the Board has made a report on Robinson Point.

The CHAIRMAN. Yes, sir. I have the report here, and it is also in the annual report, on page 170.

Colonel LOCKWOOD. I can add nothing to that. The way in which those matters are arranged is that the district officers, the engineer and inspector, make a joint report with reference to the necessity of those things, and then the papers are presented to the Board at its annual meeting, and it is approved or disapproved. If approved, it goes into the annual report with the Board's recommendations. This is a case where two keepers are required and where only quarters for one exists. In view of the statements you have made, that is possibly one of the places that might be passed over without any material injury.

The CHAIRMAN. I see you have recommended it for six years?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. I suppose it can be omitted for another year?

Colonel LOCKWOOD. They have been getting along for six years.

The CHAIRMAN. This item was not provided for last year in the sundry civil appropriation bill, I take it?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. We have a large number of Senate acts before us, most of which relate to points on the Pacific coast.

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Please give us an idea as to the comparative provisions of aid to navigation on our Pacific coast and our Atlantic coast.

Colonel LOCKWOOD. In the main the Atlantic coast is probably better provided with aids to navigation than the Pacific coast. There is one light that, I think, is very essential on the Pacific coast. That is the one at Point Cabrillo. I think there is a bill in for it. There is a fog signal at Quarry Point. That is merely to divert money that was formerly appropriated for a light and fog-signal station at Point Dume. There were \$63,000 appropriated for that light and we could not get the land. They wanted something like \$40,000 or \$50,000 for the land.

The CHAIRMAN. Of course, it makes no difference about a diversion. It takes the money just the same. We have here Senate act No. 4003 to establish a fog signal at Quarry Point, Angel Island, Bay of San Francisco, California. Is Quarry Point just the same as Point Dume; does it answer the purpose?

Colonel LOCKWOOD. We have nothing there at all. This is for a fog signal and dwelling. There is a light-house and fog signal being put on Southampton shoal. That is near there. That marks one side of the channel. I should say that Quarry Point could be let alone this year, because the light-house and fog signal at Southampton shoal is just to the east.

The CHAIRMAN. Does the fog signal at Quarry Point have anything to do with the proposition at Point Dume?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. The mere fact that it diverts the money does not make any difference, because it is just the same whether it diverts the money or takes it in the first place. It takes the money out of the Treasury just the same.

Colonel LOCKWOOD. I see. The one was to cost \$63,000 and the other \$12,000. The \$63,000 has been appropriated.

The CHAIRMAN. It has not been expended?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. And it will not be?

Colonel LOCKWOOD. No; the Board does not propose to expend it there.

The report on the fog signal at Quarry Point, California, is as follows:

The Committee on Commerce, to whom was referred the bill (S. 4003) to establish a fog signal at Quarry Point, Angel Island, Bay of San Francisco, California, having considered the same, report it with an amendment and as amended recommend its passage.

The bill as amended has the approval of the Commerce and Labor Department, as will appear by the following extract from the Annual Report of the Light-House Board for 1903:

Quarry Point, Angel Island, San Francisco Bay, California.—The following statement, made in the Board's last eleven annual reports, is renewed:

"Various petitions have been received from those representing marine interests asking that a fog signal be established at this point. The passage between the eastern side of Angel Island and Southampton Shoal is quite narrow. The strong tides setting in and out through the Golden Gate have full force on a vessel bound up or down the bay, and in the case of ships being towed, as so many are, past this point the set of the current is enough to make it hazardous, there being danger either of running aground on Southampton Shoal or Angel Island. An enormous quantity of shipping annually passes this point bound to or from the

great grain wharves at Port Costa, the Sacramento, and San Joaquin rivers, and Mare Island Strait. Hundreds of the largest sailing ships are towed from San Francisco to Port Costa, where they load with grain and are then towed down and out to sea. In this way there is more shipping passing through these waters than anywhere else in the district, except through the Golden Gate. There have been a number of casualties in the vicinity of this point.

"Among many were the following:

"The ferry steamer *Contra Costa*, plying between San Francisco and San Quentin with passengers, ran ashore near California City.

"The ship *E. B. Sutton*, while being towed down from Port Costa, ran ashore near Quarry Point, Angel Island.

"The ship *Eleanor Margaret*, bound to Port Costa, ran ashore on Bluff Point, Raccoon Straits.

"The ship *Maulsden*, while being towed to Port Costa, ran ashore on Southampton Shoal.

"Mariners have asked that Quarry Point be selected for the fog-signal station, because to make a start upriver in a fog it is necessary to make Angel Island to get a departure. After careful examination the Board reached the conclusion that a fog signal at this locality would be a decided aid to mariners. In view of the great economy of establishing and maintaining a large fog bell here instead of a steam fog signal, it is decided in favor of the former. It is estimated that it will cost \$6,000 to establish this fog bell, and it is recommended that an appropriation of this amount be made therefor.

"Much complaint has been made by mariners that the bell fog signals used at the light and fog-signal stations in this vicinity are not sufficiently far-reaching. The Board is now of opinion that the signal to be used at Quarry Point should be of a more efficient character than a bell, particularly as all the commerce bound to Vallejo, Mare Island, and the Sacramento and San Joaquin rivers must pass close to a bold and rocky promontory. It is believed that it should be a first-class compressed air siren. Quarry Point being part of the military reservation at Fort McDowell, on Angel Island, no expense for its site would be incurred. It is estimated that such a signal, with quarters for the keepers, could be built for \$12,000."

The Board now recommends that it be authorized to expend so much of this amount as may be needed from the \$63,000 appropriated for the construction of a light and fog-signal station at Point Dume, California, by the act of March 3, 1901, for the establishment of this signal, with quarters for the keepers.

The CHAIRMAN. The next item is Senate Act No. 4004, for light-keeper's dwelling at Cape Mendocino, California. You have a report on that showing that the temporary structure now occupied by one of the keepers is almost uninhabitable on account of its bad and unsanitary condition, and that it is also unsafe.

Colonel Lockwood. I have talked with the Naval Secretary about this matter. He was there for some time. He says that the conditions there are worse even than described in the report.

The CHAIRMAN. He thinks that that light-keeper's dwelling ought to be erected?

Colonel Lockwood. Yes, sir.

The CHAIRMAN. He says: "The temporary structure now occupied by one of the keepers is almost uninhabitable on account of its bad and unsanitary condition." How many keepers are there? Why do we not cover all of the keepers in one building?

Colonel Lockwood. As near as I can recollect, one of the keepers lives in an oil house now.

The CHAIRMAN. That is this temporary building. The report says: "As this was originally built for an oil house and not a dwelling, no permanent improvements can be attempted." That is the temporary structure now occupied by one of the keepers?

Colonel Lockwood. This is to provide quarters for the second keeper, of \$5,500.

The CHAIRMAN. Usually you attempt to provide quarters for the keepers in one building?

Colonel LOCKWOOD. Where it is plainly an advantage. That is, where one double dwelling can be built more cheaply and will answer just as well as two separate dwellings, the plan is to put them all under one roof.

The CHAIRMAN. You are satisfied, then, that this provision ought to be allowed?

Colonel LOCKWOOD. Yes, sir; I have no doubt about that.

The report on quarters for light keeper at Cape Mendocino, California, is as follows:

The Committee on Commerce, to whom was referred the bill (S. 4004) to establish at Cape Mendocino, California, quarters for the light keeper, having considered the same report thereon with a recommendation that it pass.

The bill has the approval of the Commerce and Labor Department, as will appear by the following extract from the annual report of the Light-House Board for 1903:

Cape Mendocino, seacoast of California.—The following recommendation, made in the Board's last seven annual reports, is renewed:

"The temporary structure now occupied by one of the keepers is almost uninhabitable on account of its bad and unsanitary condition; it is also unsafe, as its foundations are so poor that it has settled several times, and although each time it has been raised and temporarily repaired it has subsequently settled again. As it was originally built for an oil house and not a dwelling, no permanent improvement can be attempted. It is estimated that a proper structure can be erected for \$5,500 and it is recommended that an appropriation of that amount be made therefor."

The CHAIRMAN. The next item is Senate Act No. 4005, for a fog signal on one of the jetties at the entrance to the harbor at Humboldt Bay, California, to cost not to exceed \$15,000. There are now three lights on the jetties?

Colonel LOCKWOOD. Yes, sir. I have talked with Captain Sebree about that, and he seemed to think that while it was desirable it was not absolutely necessary in view of the fact that there are places that require aids of that character much more.

The CHAIRMAN. How much is there? Where is this?

Colonel LOCKWOOD. I can not say. It is where the Government has built a very extensive jetty work out into the bay. I think that is a matter that has been reported for a number of years.

The report on the fog signal at Humboldt Bay, California, is as follows:

The Committee on Commerce, to whom was referred the bill (S. 4005) to establish a fog signal on one of the jetties at the entrance to the harbor at Humboldt Bay, California, having considered the same, report thereon with a recommendation that it pass.

The bill has the approval of the Commerce and Labor Department, as will appear by the following extract from the annual report of the Light-House Board for 1903:

Humboldt Bay, California.—The following recommendation, made in the Board's last three annual reports, is renewed:

"There are three lights maintained on the jetties to guide vessels in over the bar. These, however, are ineffective in thick or foggy weather by day or night. It is evident that a fog signal is much needed here. It is estimated that a proper fog signal can be established on either the north or south jetty at a cost not to exceed \$15,000. The Board therefore recommends that an appropriation of this amount be made therefor."

The CHAIRMAN. The next item is Senate act No. 4007, for a keeper's double dwelling at Point Bonita, Cal.?

Colonel LOCKWOOD. That is a very essential matter.

The CHAIRMAN. This dwelling was built in 1856.

Colonel LOCKWOOD. Captain Sebree says those quarters are in very bad condition and that is one of the important lights to San Francisco on the north head.

The CHAIRMAN. Why should a double dwelling cost \$15,000?

Colonel LOCKWOOD. The cost of those structures on the Pacific coast is from 50 per cent up more than on the Atlantic coast.

The CHAIRMAN. The bill that we just referred to proposed to put up a single dwelling for \$5,500, and one who was not posted might suppose that a double dwelling, instead of costing three times what a single cost, would not cost twice as much?

Colonel LOCKWOOD. At Cape Mendocino they can deliver the material by boat direct, while at Point Bonita there is a long haul by team. That is a feature of light-house construction on the Pacific coast that is very marked—the cost of getting the materials to the site.

The CHAIRMAN. How do you build the light-houses—by day labor or contract?

Colonel LOCKWOOD. They are built by contract, as far as possible.

The CHAIRMAN. I mean the dwellings?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Do you have any trouble with the labor organizations?

Colonel LOCKWOOD. No; we do not have much trouble.

The CHAIRMAN. I remember when you put up a new light-keeper's dwelling at South Chicago harbor a few years ago that some of the labor people were after me continually to get me to insist that that building, as I now remember, should be built by day labor instead of by contract, and then when the contract was let the contractor brought laborers in from outside who did not follow the union scale in Chicago, which is, of course, a high scale, and they objected to that. Of course, I did not interfere, because I thought the Government was getting the benefit of it. I wondered if you had that difficulty, usually?

Colonel LOCKWOOD. No, sir. We get the labor through the civil-service rules. Even the laborers in the light-house establishment are regularly appointed. The people who take a technical examination have to be appointed and take the oath, and they can not get out of the service without going off or resigning.

The CHAIRMAN. Does that apply to carpenters and masons?

Colonel LOCKWOOD. Yes, sir; down to the laborers.

The CHAIRMAN. I mean temporary service, like constructing a building?

Colonel LOCKWOOD. There are some variations permitted in a case of that kind, but they are appointed, I think. I have not attempted to keep the run of the civil-service rules in regard to that, because it takes one man all the time to keep track of it. In the case of temporary employees, however, my recollection is that they can be employed and then the arrangements made with the Civil Service Commission afterwards; while in the case of regular laborers it all has to be gone through in advance.

The CHAIRMAN. I notice that last year we provided in the sundry

civil appropriation bill for a double dwelling at Point Conception, Cal., \$9,000?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Do you have some reason for believing that this should be \$15,000? Is this at San Francisco?

Colonel LOCKWOOD. Yes, sir. Point Bonita is to the north of the Golden Gate and is one of the main lights coming in there. It is very much exposed. It is a rocky site, and the detailed estimate was furnished by the engineer and approved by the Department at the time the recommendation was made.

The CHAIRMAN. The original estimate was \$11,905?

Colonel LOCKWOOD. That has been increased since on account of the increase in the price of material and labor. That occurs quite frequently. In cases where these recommendations have been in for four or five years the engineer very frequently submits a revised estimate to meet the changed conditions.

The CHAIRMAN. Have you had any trouble to keep the light-house keepers there?

Colonel LOCKWOOD. No, sir; there is no trouble about that.

The report as to the dwelling for assistant keepers at Point Bonita, Cal., is as follows:

The Committee on Commerce, to whom was referred the bill (S. 4007) to authorize an increase in the appropriation for a dwelling for assistant keepers at Point Bonita, California, having considered the same, report it with an amendment, and as amended recommend its passage.

No appropriation has been made for this building.

The bill thus amended has the approval of the Commerce and Labor Department, as will appear by the following extract from the annual report of the Light-House Board for 1903:

Bonita Point, entrance to San Francisco Bay, California.—The following recommendation was made in the Board's last annual report:

"The dwelling occupied by the assistant keepers, built in 1856, an old stuccoed brick structure of one and a half stories, does not afford adequate accommodations for the keepers and their families. Plans and estimates for a new double dwelling, to cost \$11,905, have been approved. The Board recommends that an appropriation of this amount be made therefor."

In consequence of the increase in the price of labor and materials in this vicinity the Board recommends that the amount of this estimate be increased to \$15,000.

The CHAIRMAN. The next item is Senate Act No. 4416, for lighting Ambrose channel. We provided in the sundry civil appropriation bill last year that you should furnish detailed estimates at the next session for a complete system of lighting Ambrose channel, including the number and character of lights required and the cost of each.

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. On page 45 of your report you have an estimate for a light vessel, at \$90,000; a light-house, at \$125,000, and a tank light vessel at \$15,000?

Colonel LOCKWOOD. Yes, sir; that light vessel is to be at the sea end of the channel.

The CHAIRMAN. Where is Ambrose channel?

Colonel LOCKWOOD. It is a new channel that the Government is dredging to the east of the present channel.

The CHAIRMAN. Is it the new 40-foot channel?

Colonel LOCKWOOD. Yes, sir. The light-ship marks the entrance from the sea, and this light-house that is recommended here is to

form in connection with Romer Shoal light and West Bank light ranges for running the two arms in this channel. It makes a bend at the point where this light-house is to come in. It is the most important of the aids in that channel.

The CHAIRMAN. It was stated to us the other day by Mr. Dent, a lawyer here in the city, who is representing the steamship interests at New York, that the Engineer Corps expected to have this new channel ready for use in two years from now and that the object in asking for a light-house now was so as to have it finished by that time; that in his opinion it would not be necessary to have the light-ship. Do you know what the fact is about when the channel will be opened for navigation?

Colonel LOCKWOOD. The Board has a letter from General Mackenzie stating that if the new dredges are satisfactory a navigable channel will be opened in two years, and they figure it will be about a thousand feet wide and 35 feet deep; but that will only be available for limited navigation, for the reason that they can not permit vessels to run in and out and interfere with the work of the dredges, and that at the end of five years, provided the dredges work satisfactorily, the Engineer Department expects to have the whole channel completed.

Now, I will say this, Mr. Chairman, with regard to this proposed light-house, that it would not do to build that light-house to mark the thousand-foot channel that they expect to have at the end of two years, because that is to form a front light for running the two arms, so it must be in the center of this main channel, but no work can be done on this structure until the money is appropriated. No work can be done in connection with this light until the money is appropriated for the preparation of plans or the examination of a site, and the absolute location of that light can only be determined when the Engineer Department can state positively where the axes of these two arms are located.

The CHAIRMAN. And they can not tell that now?

Colonel LOCKWOOD. I would not think of building that light to mark that thousand-foot channel. But then it will take some time to get up the plans and make a general examination of the site. It will be in 23 feet of water. As soon as it can be determined where that channel is to be definitely located, then the work of construction can commence at once.

The CHAIRMAN. That probably will not be for five years?

Colonel LOCKWOOD. Yes, sir. They will run that to a limited extent when they get a thousand feet, and of course the availability of the channel will increase as they widen it, so the commerce will increase each year until it is completed.

The CHAIRMAN. How long will it take after you are authorized to expend the money to prepare the plans and construct the light-house?

Colonel LOCKWOOD. In a situation of that kind I should not want to estimate on less than two and a half or three years.

The CHAIRMAN. Last year we made provision in the sundry civil appropriation act for a survey of light-house sites?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. For preliminary examinations, surveys, and plans for determining the proper sites and cost of light-houses and structures for which estimates are to be made to Congress, carrying only a

thousand dollars. Under an appropriation like that could you make the plans for this light-house and locate the site?

Colonel LOCKWOOD. It would have to be for considerably more than that.

The CHAIRMAN. The amount authorized would have to be more?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Would you expect during the next fiscal year to do any actual work on the construction of the light-house itself?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. Would it be possible, if there were no light-house constructed there when the channel is thrown open, to give proper aid to navigation by the use of a temporary light-ship?

Colonel LOCKWOOD. No, sir; I do not think that would answer.

The CHAIRMAN. You think that when this channel is thrown open to navigation it is quite essential that this light-house should be there?

Colonel LOCKWOOD. Yes, sir. Those ranges should be completed. The plan contemplates the raising of the West Bank light and the raising of the Romer Shoal light, and from those two ranges this light-house is the front light. The matter of raising those two lights is a much simpler thing than building this new light-house, because it is to have a caisson structure and has to be sunk with great care.

The CHAIRMAN. Have you been able to comply with the provisions of the sundry civil act stating that you should furnish detailed estimates for a complete system of lighting for Ambrose Channel? There was no appropriation made?

Colonel LOCKWOOD. No, sir. I think that went in before this proposition of the new lights. These three lights are furnished by gas buoys. They can not be kept down in the winter. In the summer time they work all right, but not in the winter. So that is not included in the general estimate, for the reason that the cost of the gas buoys would be paid from the buoys general appropriation.

The CHAIRMAN. If we should make an appropriation this year, giving you enough money to go ahead and prepare the plans, would that be sufficient?

Colonel LOCKWOOD. Well, I think that light-house, in view of its location, is one of the most important establishments in the Light-House report this year, and it seems to me that it would be desirable, although all the money may not be spent inside of two years or two and a half years, but just as soon as the location of the channel can be definitely determined, that light-house ought to be built at once.

Mr. KYLE. And will be before a year?

The CHAIRMAN. No; not for several years. It will take some time to construct the light-house.

Colonel LOCKWOOD. Yes, sir; from two and a half years to three years. That is a pretty hard proposition. It may not take so long if we have good luck.

Mr. BURKE. To construct the light-house?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. If we should pass a bill giving authority to construct a light-house there that would not necessarily mean an appropriation for the full amount this year?

Colonel LOCKWOOD. No, sir.

Mr. BURKE. If that light-house was authorized, what would prob-

ably be the estimate as to the amount of money that would be necessary to appropriate this year?

Colonel LOCKWOOD. I have not consulted with the other members of the Board about this, but if the construction of the light-house was authorized at a cost not to exceed \$125,000, and \$25,000 were appropriated this year, why, that would be pretty safe, and we would be ready to go ahead just as soon as the location of the channel could be definitely determined. I mean to go ahead with the main structure, provided Congress appropriates the balance of the money.

Mr. BURKE. If the bill authorizing the appropriation is passed, an appropriation will come, as a matter of course, annually for the construction, will it not?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. If the light-house is authorized, why then there is no trouble in getting the appropriation.

Colonel LOCKWOOD. I have had a good deal of trouble about some of these things that have been authorized. We have had matters hung up for years in that manner.

The CHAIRMAN. Still, they are not subject to a point of order.

Mr. BURKE. The custom of our committee is simply to authorize; we do not appropriate the money. The Senate has passed these bills with appropriations.

The CHAIRMAN. Yes, sir; that is right. We strike the appropriation out.

What have you to say as to the light vessel at \$90,000?

Colonel LOCKWOOD. She can be built in eighteen months.

The CHAIRMAN. Is it necessary to provide for that vessel now?

Colonel LOCKWOOD. I expect if the naval secretary were here he would say yes, because if she is not used there she can be used as a relief vessel along the coast.

The CHAIRMAN. I mean to be used there?

Colonel LOCKWOOD. No, sir. She can be built in much less time than the light-house.

The CHAIRMAN. Is the same true of the proposed tank vessel at \$15,000?

Colonel LOCKWOOD. That is comparatively a small matter. The idea the Board had was to provide for the main aids to navigation that would be necessary for the navigation of the channel. Those are the three main aids. I have given you the information which the Board has with regard to the time when the channel will be completed. The New York shipping people come here and claim that just as soon as they can go through they will. I think there will be some trouble about that.

The CHAIRMAN. Tell us, if you please, will it be possible as a practical proposition to navigate this new channel without this light-house or some other similar aid to navigation?

Colonel LOCKWOOD. Not in the winter time, because all the lighted buoys have to come up when the ice is in the harbor as it is now.

The CHAIRMAN. So the pilots depend upon the light-house?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. They depend upon the light-house for direction?

Colonel LOCKWOOD. Yes, sir; they must have those ranges to run that channel in the winter time. As I told you about the gas buoys,

they can be used in the summer time to mark the boundary lines, but they would have to come up in the winter, so that only the ranges can be depended upon.

The CHAIRMAN. What do you mean by "ranges?"

Colonel LOCKWOOD. Two lights mark a line. Generally the rear light is so high it can be seen over the front light, and they keep them in a vertical line.

The CHAIRMAN. And that is what is proposed here?

Colonel LOCKWOOD. Yes, sir; the Delaware River is run almost exclusively in that way—by ranges.

Mr. BURKE. Is the high light you speak of a shore light?

Colonel LOCKWOOD. No, sir; that is what is known as West Bank light. It is a very fortunate thing that they have the West Bank and the Romer shoals lights, the latter to the seaward, and by raising them and properly locating this light-house under discussion we will get the two ranges by which the two arms of the channel will be run, the West Bank light and the light-house forming the incoming range, and the Romer shoal light and this light-house forming the range to run up to New York Harbor.

The CHAIRMAN. That is, this new light-house will be used for two distinct ranges?

Colonel LOCKWOOD. Yes, sir; and that is the reason that so much care has got to be used in locating it. You can understand very readily that it has to be right or else it is misleading. The tank vessel was intended to mark the junction of Ambrose channel and the present channel at the upper end—the one that comes down by Sandy Hook.

The report is as follows:

The Committee on Commerce, to whom was referred the bill (S. 4416) for the establishment of aids to navigation for lighting Ambrose channel, New York Harbor, New York, having considered the same, report thereon with a recommendation that it pass without amendment.

The bill has the approval of the Department of Commerce and Labor, as will appear by the following letter:

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, February 27, 1904.

SIR: This Department has the honor to acknowledge the receipt of a letter of February 19, 1904, from your committee, inclosing a copy of S. bill No. 4416. "For the establishment of aids to navigation for lighting Ambrose channel, New York Harbor, New York," on which suggestions are asked touching the merits of the bill and the propriety of its passage.

In reply, this Department begs leave to state that the Light-House Board, to whom the matter was referred, reports that in its annual report for 1902, it presented, on page 254, the views of the Inspector of the Third light-house district regarding the new Ambrose (east) channel, which are as follows:

NEW AMBROSE (EAST) CHANNEL.

As this channel, when completed, will be the main thoroughfare of New York Lower Bay, aids to navigation for it are a subject for consideration well in advance of the time. Acting on this fact, a conference and interviews were had by the district officers with representatives of the municipal maritime interests using the sea channels of the harbor, and a joint communication from nearly all the steamship lines affected was received, requesting improvements in the present means of marking the channels and suggesting a specific system of lights, buoys, and fog signals for the new channel.

The views expressed and the plan proposed were fully considered by the district officers, and a system was presented to the Light-House Board in a joint

report, by the provisions of which it is believed the safe navigation of the Ambrose channel will be amply secured. In view of the time expected to elapse before the channel is completed, further consideration of the subject was postponed by the Board, but it is submitted that the channel will be available for a large part of the expected traffic some years prior to its final completion, and it is earnestly recommended that measures may be taken to insure at least an appropriation by Congress for such portion of the proposed aids for the new channel as will be found necessary for the safety and convenience of vessels seeking to use this fairway.

The following is a copy of a letter from the engineer officer in charge for the improvements, in response to an inquiry from this office regarding the matter:

UNITED STATES ENGINEER OFFICE.

New York City, July 18, 1902.

SIR: Your letter of the 16th instant is received, with inquiry as to approximate date of completion of a serviceable channel, about 30 feet deep, through Ambrose Channel, New York Harbor.

It is expected that such a channel may be completed in from two to three years from now, so as to connect deep water outside the bar with the 30-foot channel inside. A close approximation is impracticable, and no great reliance can be placed upon this estimate.

Very respectfully,

W. L. MARSHALL,

Major, Corps of Engineers.

Capt. WILLIAM M. FOLGER, U. S. Navy,

Inspector Third Light-House District, Tompkinsville, N. Y.

The following is a copy of a letter of January 13, 1904, from the Secretary of Commerce and Labor to the Secretary of the Treasury transmitting an estimate of appropriation for lighting Ambrose channel, New York Harbor:

DEPARTMENT OF COMMERCE AND LABOR,

OFFICE OF THE SECRETARY,

Washington, January 13, 1904.

SIR: The work being done by the Corps of Engineers, U. S. Army, in deepening Ambrose channel, New York Harbor, having progressed to such a point as to make it necessary that proper steps be taken for lighting the channel so it can be used by vessels for which it is being built, this Department, at the instance of the Light-House Board, has the honor to recommend that proper measures be taken to obtain appropriations as follows:

To establish a light-vessel with fog signal about a mile to the eastward of the east entrance of the east channel and on its axis.....	\$90,000
For a light-house at the intersection of the axis of the east channel and the west edge of it to form a range.....	125,000
To establish a tank light-vessel at the junction of the east and main ship channels	15,000

It is desirable that these appropriations be made as soon as practicable, as plans and specifications must be made for these aids to navigation after the passage of the bills making appropriations for them.

Respectfully,

GEO. B. CORTELYOU,

Secretary.

The SECRETARY OF THE TREASURY.

This Department, concurring with the Light-House Board, therefore recommends the passage of the bill in question.

Respectfully,

GEO. B. CORTELYOU,

Secretary.

The CHAIRMAN OF THE COMMITTEE ON COMMERCE,

United States Senate.

The CHAIRMAN. The next item is Senate bill 4563, which provides for the delivery on the Pacific coast of two light-vessels which were built in New York and New Jersey?

Colonel LOCKWOOD. That is already a law. The light-ships will start this week.

The CHAIRMAN. Does this require any additional appropriation? Colonel LOCKWOOD. Not that I know of. We simply used the balance that was saved from the appropriation for building five vessels. The report is as follows:

The Committee on Commerce, to whom was referred the bill (S. 4563) for the delivery on the Pacific coast of two light-vessels now being built in New York and New Jersey, having considered the same, report thereon with a recommendation that it pass without amendment.

The bill has the approval of the Light-House Board, as will appear by the following letter, which inclosed the draft of the bill:

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF NAVAL SECRETARY, LIGHT-HOUSE BOARD,
Washington, February 23, 1904.

MY DEAR SIR: Adverting to our conversation through the telephone this morning, I inclose herewith a bill for your consideration. If you remember we are building two light-vessels for the Pacific coast, which have got to be sent out there.

As there will be a surplus from building the six vessels named, we want to use this money to get your two vessels to San Francisco. I believe the passage of the inclosed bill will accomplish the object. May I ask you in the name of the Board if you will kindly help us?

Very truly, yours,

C. T. HUTCHINS.

Senator GEORGE C. PERKINS.

The CHAIRMAN. The next item is Senate Act No. 5174, which provides for the erection of a beacon light near Fair Point, in Pensacola Bay, Florida?

Colonel LOCKWOOD. There is no necessity for that, Mr. Chairman. The reason for its being introduced was that the appropriation for keepers had become so short that no new lights could be established. This is merely a beacon and can be provided for from the general appropriation for repairs as provided by law. It would have been built if there had been money enough to pay the keeper. Just as soon as that takes place the beacon will be built and lighted in the ordinary way.

The CHAIRMAN. That can be provided for out of the usual annual appropriation.

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. The next item is Senate Act No. 6181, which provides for the establishment of a light-house near Santa Barbara landing, California, cost not to exceed \$7,500.

Colonel LOCKWOOD. That is to rebuild the old light-house tower. That, I think, in view of what you have stated, would be one of the matters that could go over.

The CHAIRMAN. I see this light-house was also built in 1856?

Colonel LOCKWOOD. It is more or less dilapidated; but they still can show a light.

The report is as follows:

The Committee on Commerce, to whom was referred the bill (S. 6181) to establish a light-house near Santa Barbara landing, California, having considered the same, report thereon with a recommendation that it pass without amendment.

The bill has the approval of the Commerce and Labor Department, as will appear by the following letter:

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, December 22, 1904.

SIR: This Department has the honor to acknowledge the receipt of a letter, dated December 17, 1904, from your committee, inclosing a copy of Senate bill No. 6181, "To establish a light-house near Santa Barbara landing, California," on which suggestions are asked touching the merits of the bill and the propriety of its passage.

In reply this Department begs leave to state that the Light-House Board, to whom the matter was referred, reports that in its last seven annual reports it recommended that an appropriation of \$7,500 be made for this purpose, and that it is still of opinion that this appropriation should be made. It is also recommended on page 255 of the Book of Estimates for 1906.

The following is an extract from page 155 of the Board's annual report for 1904:

"14. *Santa Barbara, Pacific Ocean, near Santa Barbara landing, California.*—The improvements were completed. The roadway leading from the country road to the light-house was graded and oiled with crude petroleum. This road was extended in an oval surrounding the light-house lot. The grounds around the house were filled in and graded. Much fencing was built. Cement walks were laid. The spouting was so arranged as to save all available water. A force pump was put in. Various repairs were made.

"The following recommendation, made in the Board's last six annual reports, is renewed:

"The light-house at this station was built in 1856. It is of brick, with the outer wall stuccoed. The light is shown from an old-fashioned lantern, with triangular-shaped glass, built on top of the dwelling. The structure is unsightly and uncomfortable, and in winter the walls are damp. To put this building in good repair would cost as much, if not more, than to build a new modern structure. This can be done, it is estimated, for not exceeding \$7,500, and it is recommended that an appropriation of that amount be made therefor."

This Department concurs in the recommendation of the Light-House Board in this case.

Respectfully,

V. H. METCALF, *Secretary.*

The CHAIRMAN OF THE COMMITTEE ON COMMERCE,
United States Senate.

The CHAIRMAN. The next item is Senate Act No. 6182, which provides for a light-house and fog signal on Red Rock, upper part of San Francisco Bay, California, at a cost not to exceed \$30,000.

Colonel LOCKWOOD. There has been a great deal of controversy about that structure, Mr. Chairman, and I think that it might be left out this year. There are other places that appear so much more necessary.

The report is as follows:

The Committee on Commerce, to whom was referred the bill (S. 6182) to establish a light-house and fog signal on Red Rock, upper part of San Francisco Bay, California, having considered the same, report thereon with a recommendation that it pass without amendment.

The bill has the approval of the Department of Commerce and Labor, as will appear by the following letter:

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, December 24, 1904.

SIR: This Department has the honor to acknowledge the receipt of a letter dated December 17, 1904, from your committee, inclosing a copy of Senate bill 6182, "to establish a light-house and fog signal on Red Rock, upper part of San Francisco Bay, California," on which suggestions are asked touching the merits of the bill and the propriety of its passage.

In reply this Department begs leave to state that the Light-House Board, to whom the matter was referred, reports that in its last annual report it recommended that an appropriation of \$30,000 be made for this purpose, and that it is still of opinion that this appropriation should be made. It is also recommended on page 255 of the Book of Estimates for 1906.

The following is an extract from pages 158-159 of the Board's annual report for 1904:

"Red Rock, upper part of San Francisco Bay, California.—This rock is an island about 169 feet high and contains about 7½ acres. It stands near the eastern shore of the bay, 9¼ miles above Market street, San Francisco, and is passed close to by vessels bound for Port Costa, Benicia, Mare Island, and the rivers emptying into Suisun Bay. It is believed that with the establishment of a light at Southampton Shoal Red Rock would be a better place than Quarry Point for a light and fog signal. With this station vessels bound up the bay could make Southampton Shoal, giving Quarry Point, Angel Island, a wide berth, and from thence shape their course to Red Rock, on either side of which they could pass. This rock or island, formerly known as Molate Island, is a military reservation, but does not enter into the adopted project for the defenses of San Francisco, and hence no difficulty is expected in obtaining authority to occupy it for light-house purposes. It is estimated that the cost of a light and fog-signal station at Red Rock will be \$30,000, and the Board recommends that an appropriation for that amount be made therefor."

This Department concurs in the recommendation of the Light-House Board in this case.

Respectfully,

V. H. METCALF,
Secretary.

The CHAIRMAN OF THE COMMITTEE ON COMMERCE,
United States Senate.

The CHAIRMAN. The next item is Senate act No. 6648, which provides for a light and fog-signal station near Point Cabrillo, California, making an appropriation of \$50,000.

Colonel LOCKWOOD. That is regarded as an important light. It is a coast light.

The CHAIRMAN. It is regarded as an important light?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Is it in your report; we did not find it?

Colonel LOCKWOOD. It is a matter that has received the attention of the Board since the report was printed, and the district officers have reported on the necessity of it, and the Board prepared a letter for the secretary to send to the Secretary of the Treasury asking for an appropriation.

The CHAIRMAN. I did not find anything in your report.

Colonel LOCKWOOD. In the printed report?

The CHAIRMAN. Yes; in the printed report; nor did I find any Senate report on the bill.

Colonel LOCKWOOD. Well, there was one sent, because I initialed the letter.

The CHAIRMAN. There was a report on the bill, but I sent down for the report, and they sent me a report on the wrong bill. Where is this location?

Colonel LOCKWOOD. It is north of San Francisco, in a stretch of the coast that is not covered by coast lights. There is a long stretch of 100 miles without any intermediate light, and this is very important on that account and also to light the harbor there, which is quite a business place.

The CHAIRMAN. How does it happen that the engineer out there did not discover the necessity of this sooner?

Colonel LOCKWOOD. He does not initiate any trouble of that kind

as a general thing, unless it is absolutely necessary. There is a great deal of correspondence with reference to that matter in the files of the Board.

The CHAIRMAN. It is a matter that you have considered?

Colonel LOCKWOOD. Yes, sir; since the report was printed, and we have had a great deal of correspondence on the subject. We have two reports from the district officers in regard to the location. They wanted it near the harbor. I can not recall those names.

The CHAIRMAN. Will you send us as soon as you can that information, to-day or to-morrow?

Colonel LOCKWOOD. I will send it to you to-day.

The CHAIRMAN. Send us a statement which can be printed in our record for the benefit of the subcommittee.

Colonel LOCKWOOD. Yes, sir. I will send it to-day.

The CHAIRMAN. Your present impression is that this ought to be provided for?

Colonel LOCKWOOD. Yes, sir. There is a long stretch of coast there and vessels coming up to a certain place hug the shore and in foggy weather they are liable to go on the beach.

The CHAIRMAN. Now, we come to the House bills. The first one is H. R. 114, to provide for a light-house depot at or near the city of Milwaukee. That, I understand, was covered by the sundry civil bill?

Colonel LOCKWOOD. That is already provided for. That is a law.

The CHAIRMAN. The next item is H. R. 115, providing for the establishment of a third-order flash light and fog signal upon south end of breakwater, harbor of refuge, Milwaukee, Wis., at a cost not to exceed \$100,000.

Colonel LOCKWOOD. That is one of the most important lights now on the Lakes for the reason that the commerce across the Lakes to Milwaukee is continued in the winter as well as in the summer and it is expected, if that light-house can be established, that it will do away with at least one other light.

The CHAIRMAN. What other light?

Colonel LOCKWOOD. The one to the north of Milwaukee.

The CHAIRMAN. Your original recommendation for this was for a fourth-order flash light?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. If we had provided for that, would you now need to change it?

Colonel LOCKWOOD. There was really no necessity of putting in the order of the light because putting in the order is liable to be misleading. There are certain fourth order flash lights that are three times as strong as the ordinary third order flash lights.

The CHAIRMAN. But you changed the amount from \$75,000 to \$100,000.

Colonel LOCKWOOD. That had nothing to do with the order of the light. That would make a difference of not more than \$800 or a thousand dollars anyhow in the cost of the light. It is merely because the engineer reports that owing to certain conditions of labor and material he deems \$100,000 essential.

The CHAIRMAN. I see in the last report that "the elevation should not be less than 105 feet above mean lake level. This, while it is somewhat higher than at first proposed, would enable the light to be

seen well past if not over North Point, looking from the southward." Is that necessary?

Colonel LOCKWOOD. The idea was to do away with the light on North Point. It is up in a settled part of the town where it is difficult to figure out the light from the electric lights in the neighborhood. It is an old-fashioned light.

The CHAIRMAN. If provision should be made for this third order flash light at \$100,000, with a fog signal, you can discontinue the light at North Point?

Colonel LOCKWOOD. I do not think there is any question but that it ought to be done and the Board tried to abolish it under present conditions not a great while ago, but there was a great pressure brought to bear by the navigation companies there, and I have since found out that it should not have been given as much weight as was given it.

The CHAIRMAN. We want to know whether the North Point light will be abolished and we will be saved the cost of keeping that light if this other light is created?

Colonel LOCKWOOD. I can only say that I will do all I can for it. I do not think there is any question but what that light will go when this light-house is established.

The CHAIRMAN. Will there be any need for the North Point light if this is provided for?

Colonel LOCKWOOD. The district officers and the Board think not.

The CHAIRMAN. You think this should be provided for this year?

Colonel LOCKWOOD. Yes, sir; I think there is no question about that.

The CHAIRMAN. The next item is H. R. 4523, introduced by Mr. Burton, for the purchase or construction of a steel steam light-vessel to be located on Martins reef, Michigan. This recommendation was originally for \$15,000 for a wooden vessel. Now you want a steel vessel with a fog whistle, etc., at \$35,000?

Colonel LOCKWOOD. Yes, sir. \$15,000 was appropriated one year to build a small vessel for use in Green Bay and it was found to be wholly inadequate. This vessel will be left out so late in the season and be put out so early in the spring that she has to be a very powerful boat. You know where this is, between Detroit and Mackinac, at the mouth of the St. Marys River, and all the shipping to Lake Michigan, coming from Lake Superior, goes right by that place. There is a reef for some distance.

The CHAIRMAN. Do you know how far that reef runs out?

Colonel LOCKWOOD. No, sir. It is only a little to the north. Of course there is a buoy out there.

The CHAIRMAN. Of course a light-vessel is much cheaper to provide than a light-house?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. How is it as to the question of maintenance?

Colonel LOCKWOOD. The light-vessel is more expensive.

The CHAIRMAN. How much of a complement does it require?

Colonel LOCKWOOD. That is the Naval Secretary's work.

The CHAIRMAN. But we have not the Naval Secretary here.

Colonel LOCKWOOD. I have practically nothing to do with the floating aids. I will say it would require probably six men.

The CHAIRMAN. Six men to operate the light-ship?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Are they employed by the year or only during the season of navigation when the ship is out?

Colonel LOCKWOOD. They are employed by the year.

The CHAIRMAN. What do they do in the winter time; are the men employed?

Colonel LOCKWOOD. They are used in refitting and such work as may be necessary. If they were employed by the month during the time they are out their pay would amount to practically the same.

The CHAIRMAN. You try to find something for them to do in the winter time?

Colonel LOCKWOOD. Yes, sir; as far as possible.

The CHAIRMAN. How do you regard this matter, so far as the necessity for it is concerned?

Colonel LOCKWOOD. It is something that the Lake navigation has asked for; it has been asked for a number of years.

The CHAIRMAN. Which would be the more important, the new light-house at Milwaukee or this light vessel at Martins reef?

Colonel LOCKWOOD. It is quite difficult to compare the two, but I should say the Milwaukee light-house. They have gotten along so far without that ship, but it would be a great aid and convenience.

The CHAIRMAN. Is there any material complaint from the steel men, the iron-ore people, for lack of this?

Colonel LOCKWOOD. No, sir; the recommendation comes from the Lake Carriers' Association, master pilots, and people of that sort.

Mr. BURKE. You think this would be a benefit and aid to navigation, but not a necessity?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. We will now take up H. R. No. 4860 and H. R. No. 5219, and Senate act No. 6929. The House bills have been introduced by Mr. Burleigh, of Maine, for a light-house and fog signal at Isle au Haut, Me., at a cost of not to exceed \$14,400.

Colonel LOCKWOOD. That is mainly required for marking a harbor of refuge for fishermen.

The CHAIRMAN. On this matter you say, "Haddock are caught here from March till May, haddock, cod, and hake from May till October, and cod from October till January," so that the fishing season runs there apparently all the year round, except in February. They have no harbor of refuge with a light now?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. The idea of this is to let the fishing smacks stay out on the water fishing just as long as they can in the evening?

Colonel LOCKWOOD. And in bad weather to have some place to run to for shelter, not especially in the evening, but in heavy weather for the purpose of refuge.

The CHAIRMAN. How would the light-house help them very much in heavy weather in the daytime?

Colonel LOCKWOOD. It would not help them in the daytime, but the fog signal would aid them at all times.

Mr. BURKE. Their fishing is not confined to the day?

Colonel LOCKWOOD. I can not say about that. I know the engineer very strongly recommended it. He is a man who has been on that coast for a good many years and is very careful.

The CHAIRMAN. The report says: "The trawls set by fishermen, which often contain several thousand hooks, can not be suddenly left

without material loss or disadvantage, and when storms or night approach the vessels often need to remain on the grounds till the last moment," etc. You think this is proper?

Colonel LOCKWOOD. It is undoubtedly a very proper thing.

The CHAIRMAN. The next item is H. R. 7635, introduced by Mr. Brantley, to place three lighted buoys on the outer bar of Brunswick, Ga., at a cost of \$7,500. Has this ever been provided for?

Colonel LOCKWOOD. No, sir. With regard to that matter, those lighted buoys, if their necessity is indicated, can be taken care of under the general appropriation, but the point about establishing anything of that kind down there is that it is so expensive to maintain it. You see they have to be taken up and taken to Charleston. That makes very expensive work.

The CHAIRMAN. Do they have very much shipping business at Brunswick, Ga.?

Colonel LOCKWOOD. There is a good deal.

The CHAIRMAN. Of course the fact is that every place where they can possibly establish a port along the Atlantic, the Gulf, the Pacific coast, and on the lakes they want to establish a port, not for the benefit of shipping but for the benefit of the special locality. The interest of the Government is to provide for the shipping, and it is just as convenient for the shipping interests and much cheaper for the Government to have large ports like New York, Philadelphia, Baltimore, and Charleston than it is to have forty small ports where we have to provide the same aids to navigation to get in and out of the harbor that we would have to provide at a much larger port.

Colonel LOCKWOOD. This is a matter that they have been trying to get the Board to attend to for quite a long time and the Board has steadily declined to do so.

The CHAIRMAN. The next item is the bill H. R. 7636, introduced by Mr. Brantley, to construct and place a light-ship off the outer bar of Brunswick, Ga.

Colonel LOCKWOOD. This is a different matter. The light-ship is a way offshore. The suggestion made by the naval secretary, Captain Sebree, who had to go to New York to-day, was that he regarded that light-ship as so important that if your committee would only recommend the one he should select that one as the one of prime importance. That light-ship affects shipping, for it is so general in its effect.

The CHAIRMAN. General in its effect—not for the benefit of the commerce going into Brunswick, I suppose?

Colonel LOCKWOOD. The general coastwise commerce for all the ports, up and down that coast. They would make that light-ship as a point of departure to the different localities along there. I know the naval secretary regards that as the most important item in the light-ship matter.

The CHAIRMAN. Would a light-ship off the outer bar of Brunswick, Ga., be of value in reference to any of the other shoals that reach out into the ocean?

Colonel LOCKWOOD. That light-ship would be out at sea 10 or 12 miles. It is a coast light-ship in a general sense—not specially for any one locality, but for all the localities. It is deemed by the naval members of the board very essential as an aid to navigation.

Mr. BURKE. Is it practicable in a place of that kind to erect a light-house?

Colonel LOCKWOOD. No, sir.

Mr. BURKE. It is something like the Diamond shoal?

Colonel LOCKWOOD. This is right out in the open sea. There is no shoal about there.

The CHAIRMAN. We do not find any report from you on that in the report you sent to the committee. I judge from your statement that the shoals reach out into this bight?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. And that the vessels coming along the coast pass, of course, outside the bight, and if you put the ship out there it would protect the passing vessels?

Colonel LOCKWOOD. Yes, sir. It would protect vessels bound up or down the coast, around the Gulf of Mexico, and vessels coming up generally from the south or going down from the north. They would make that light and in connection with that it would be a sort of safeguard to them. They could locate themselves. There is a long stretch where there is not any aid outside, and that was the way in which Captain Sebree referred to it Saturday. He said that if that matter came up he wished I would state that if there was to be one light-ship he would name this as being the most desirable.

The CHAIRMAN. What will be the cost of maintaining that light-ship?

Colonel LOCKWOOD. This is entirely out of my line.

The CHAIRMAN. Yes, and we are sorry Captain Sebree could not be with us.

Colonel LOCKWOOD. The Secretary ordered him away. I will send you that information.

The CHAIRMAN. Perhaps you can tell us this. Take the light-ship at Diamond Shoal. You keep one light-ship there?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. That light-ship was blown away some time ago; what do you do in that case?

Colonel LOCKWOOD. She has not been blown away in four years.

The CHAIRMAN. Was she not blown away in the recent storm?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. Suppose she was blown away; what would happen then?

Colonel LOCKWOOD. There would be no light-ship there.

The CHAIRMAN. You have no light-ship in reserve?

Colonel LOCKWOOD. Yes, sir. At Hatteras we have two light vessels and one relieves the other after three months. The men have to come in. That is absolutely essential. If they stay out there longer than three months they are likely to get queer. The one inside at the end of three months goes out and picks up the anchorage and stays there for three months and the other one comes in. So at Diamond shoal the expense is practically for maintaining two light vessels.

The CHAIRMAN. But that is not the case at any other place?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. Suppose a light-ship which is on duty is injured?

Colonel LOCKWOOD. We send a relief light vessel.

The CHAIRMAN. Where do you get the relief vessel?

Colonel LOCKWOOD. We aim to have one. They have to be brought in for repairs.

The CHAIRMAN. How many relief vessels do you have?

Colonel LOCKWOOD. That is something I can not say. We have some in the Third district for that district and some in the First and Second districts for those districts. I should say that the South shoal light-ship service is duplicated. There are two vessels for that service—that is, main station at Nantucket. That one and the Diamond shoal are practically in duplicate.

The CHAIRMAN. When this vessel at Diamond shoal goes out, does it have any communication with the shore at all during the three months?

Colonel LOCKWOOD. No, sir; except when the light-house tender goes out. They aim to go out every three months.

The CHAIRMAN. What for?

Colonel LOCKWOOD. To inspect them and see whether they are in proper condition.

The CHAIRMAN. If the light vessel comes in every three months, what is the object of the tender going out every three months?

Colonel LOCKWOOD. They take out the supplies.

The CHAIRMAN. The light tender would go there after they had been there six weeks probably?

Colonel LOCKWOOD. They aim to do that, but in bad weather, and if there is not anything to indicate any chance of trouble, they may not go out.

The CHAIRMAN. Could they not send in a rowboat?

Colonel LOCKWOOD. No, sir; they could in good weather. If there was any actual necessity they could send in a boat to Hatteras.

The CHAIRMAN. But that is not the customary thing?

Colonel LOCKWOOD. No, sir.

Mr. BURKE. How many men are maintained on a light-ship of that kind?

Colonel LOCKWOOD. As near as I can recollect, seven or eight. You see, they are self-propelling. They have an engine, and if they get off the station they can go back. They go out and come in under their own steam, and then the lights are run by steam power.

The CHAIRMAN. Can the vessel at Diamond Shoal anchor itself so that the anchor will not drag it?

Colonel LOCKWOOD. Yes, sir; I think she has 30 fathoms of water, and I think some 150 fathoms of chain, with a supporting buoy about 75 fathoms from the vessel to take up the weight of the chain, so that when she goes up and down in this way [indicating] she does not have to lift the chain off of the bottom, and the anchor, I think, weighs 7,500 or 10,000 pounds. There is no information at the Board room that I know of about that vessel being off recently.

Mr. BURKE. Will you advise Mr. Mann to-day as to the probable cost of maintaining that vessel?

Colonel LOCKWOOD. Yes, sir.

Mr. BURKE. The report states that \$90,000 would be sufficient. Are you still of that opinion?

Colonel LOCKWOOD. Yes, sir. We can build a single light-ship now for \$90,000.

The CHAIRMAN. We have the House bills Nos. 8702 and 13861 and Senate bill 3905, to establish aids to navigation in Delaware Bay and

river. I was under the impression that we reported that bill last year.

Colonel LOCKWOOD. One light-house was appropriated for last session—the Elbow of Cross Ledge light-house.

The CHAIRMAN. I find in the sundry civil act of last year: "For establishing light-house and fog signal on Elbow of Cross ledge, \$75,000."

Colonel LOCKWOOD. Yes, sir. It is possible that your committee authorized the construction of them, but this bill, I think, provides for establishing them.

The CHAIRMAN. The first item in House bill 13861 is Brown Shoal, Delaware, for establishing a light-house and fog signal.

Colonel LOCKWOOD. Yes, sir. But allow me to state, Mr. Chairman, the order in which they come is different from that given in this bill.

The CHAIRMAN. How do you mean—the order in which they are needed?

Colonel LOCKWOOD. The order of their importance.

The CHAIRMAN. I think you made a report to us.

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. What is the order of their importance, according to your opinion, now?

Colonel LOCKWOOD. They would come Elbow of Cross Ledge, Goose Islands Flats—

The CHAIRMAN. In H. R. 8702 there are twenty items?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. All relating to aids to navigation in Delaware Bay and River?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Are those given in the order of their necessity?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Elbow of Cross ledge light-house, that was provided for in the sundry civil act of last year?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Goose Island flats, New Jersey: For establishing a light-house and fog signal on or about where the present gas buoy numbered 26 is located. What is the reason for establishing that, or what is the necessity for that?

Colonel LOCKWOOD. I can not explain that to you intelligently without having a chart to show you. This whole system has been gotten up from the recommendations made by the pilots and the Philadelphia Maritime Exchange, and the information of the inspector and engineer of that district, who have gone over and eliminated a good many things. This is a result of their investigation.

The CHAIRMAN. The total expense here would be enormous?

Colonel LOCKWOOD. \$635,000.

The CHAIRMAN. The total expense would be a great deal more than \$635,000.

Mr. BURKE. On page 69 of the report they estimate \$635,000 for nine points.

The CHAIRMAN. The Adams bill, H. R. 13386, provides for a total expenditure of \$635,000, and it has only nine items. Those are the items you seem to have in your report. They commence with Browns Shoal. That is the Adams bill. The Bingham bill carries twenty items.

Colonel LOCKWOOD. There is a new bill which has been introduced, because I recollect distinctly having one prepared in the office at Mr. Bingham's request.

The CHAIRMAN. Take the Senate bill No. 3905, which was the same as the Adams bill, H. R. 13861, containing those nine items, and we struck out all of the nine items and put this provision in authorizing aids to navigation at a cost not to exceed \$230,000 in the following order:

First. A light-house and fog signal on Elbow of Cross ledge at a cost not to exceed \$75,000.

Second. A light-house and fog signal on Goose Island flats, at a cost not to exceed \$85,000.

Third. Range lights on Seventeen Foot Knoll and Marcus Hook, at a cost not to exceed \$70,000.

Colonel LOCKWOOD. Yes, sir.

Mr. BURKE. That is in accordance with the recommendation of the Light-House Board?

Colonel LOCKWOOD. There is no necessity for any further authorization, because we can not build them faster than that if you made the appropriations. That authorizes the construction of three light-houses.

The CHAIRMAN. Of course one is already carried in the sundry civil bill?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. That has not been built?

Colonel LOCKWOOD. No, sir; the plans have just been approved.

The CHAIRMAN. So, if we should provide for the Goose Island Flats fog signal and for the range lights on Seventeen Foot Knoll and Marcus Hook that would probably be all that could be expected at present?

Colonel LOCKWOOD. That would be my idea. A good many of these light-houses are right out in the river and they have to be caisson structures, and it takes considerable time to build them.

Mr. BURKE. The report says, "The Seventeenth harbor of refuge, Delaware." Provision has already been made for this structure and work will be commenced as soon as it can be safely done. It is therefore suggested that the seventeenth item be omitted from the bill.

Colonel LOCKWOOD. That is the letter of Mr. Spaulding, Acting Secretary?

Mr. BURKE. Yes, sir; and then he says as to the eighteenth, nineteenth, and twentieth, "The Department does not recommend any legislation with regard to these three locations, and, in its opinion, suitable provision has already been made or authorized for these locations."

Colonel LOCKWOOD. The way that came about was this: They took the recommendations of the pilots. In the first place, the bill was prepared by the Maritime Exchange and they put in everything that the pilots wanted, and a good many of the things were matters which could be attended to under the general appropriation.

The CHAIRMAN. Are you able now to say to us which of these five light-houses and fog signals which you recommended is the most important—Browns shoal, Miah Maul shoal, Joe Flogger shoal, Arnolds Point shoal, or Goose Island flats?

Colonel LOCKWOOD. Will you allow me to send you that information to-day? The reason why I ask that is they have changed their minds several times in Philadelphia as to the order of necessity, and I know that we got into a muddle about it last year, and my impression is that the list starting out with Elbow of Cross ledge is the proper one, but I will send you that information this afternoon.

The report is as follows:

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3905) to establish certain aids to navigation in Delaware Bay and River, having considered the subject, report that the three first-named aids to navigation mentioned in the letter of the Secretary of Commerce and Labor, printed in Senate Report No. 491, upon the bill are of the most immediate and primary importance, and recommend that the bill be amended by striking out all after the word "exceed," in line 6, on page 1, to the end of the bill and insert the following:

two hundred and thirty thousand dollars; said aids to be established in the order in which they are named:

First. A light-house and fog signal on Elbow of Cross Ledge, at a cost not to exceed seventy-five thousand dollars.

Second. A light-house and fog signal on Goose Island Flats, at a cost not to exceed eighty-five thousand dollars.

Third. Range lights on Seventeen-Foot Knoll and Marcus Hook, at a cost not to exceed seventy thousand dollars.

And that as amended the bill do pass.

DEPARTMENT OF COMMERCE AND LABOR.

OFFICE OF THE SECRETARY.

Washington, December 19, 1903.

SIR: This Department has the honor to acknowledge the receipt of a letter from your committee, dated December 9, 1903, inclosing a copy of Senate bill 2172, "For establishing further aids to navigation in Delaware Bay and River," on which suggestions are asked touching the merits of the bill and the propriety of its passage.

In reply, this Department begs leave to state that the Light-House Board, to whom the matter was referred, reports that it has carefully considered the matter of establishing further aids to navigation in Delaware River, and it has recommended that appropriations be made for the following-named works, on page 40 in its annual report for 1903:

Light-house and fog signal on Elbow of Cross ledge.....	\$75,000
Light-house and fog signal on Goose Island Flats.....	85,000
Range lights on Seventeen-Foot Knoll and Marcus Hook.....	70,000
Light-house and fog signal on Horseshoe shoal.....	50,000
Light-house and fog signal on Joe Flogger shoal.....	75,000
Light-house and fog signal on Miah Maul shoal.....	75,000
Light-house and fog signal on Brown shoal.....	80,000
Light-house and fog signal on Arnolds Point shoal.....	95,000
Range lights on Old Mans Point.....	40,000
Total	635,000

The amounts are tentative and may be varied, as borings yet to be made shall show the actual need in each case.

Referring to other items in the bill, the Light-House Board states that Congress, by act approved March 3, 1903, item No. 10, appropriated \$90,000 for the construction of Five Fathom Bank light-vessel; and so far as item No. 3, Horseshoe East, New Jersey, and west groups of range lights; item No. 11, Cape Henlopen day beacon, Delaware; item No. 12, Deep Water Point range, New Jersey; item No. 14, Schooner Ledge range, Pennsylvania, and item No. 15, Billingsport range, Delaware Bay, New Jersey, are concerned, some of the improvements suggested are already being made, while the others, if deemed advisable by the Light-House Board, can be made from the general appropriations for the Light-House Service.

Congress has already made provision, by appropriation, for the light-house and fog signal in the seventeenth item, harbor of refuge, Delaware.

This Department does not recommend any legislation for the localities and works mentioned in items No. 18, light-house on northwestern end of the harbor of refuge, Delaware; No. 19, light-house on Delaware breakwater, west end, Delaware; and No. 20, light-house and fog signal on Delaware breakwater, east end, Delaware, as the Light-House Board reports that, in its opinion, suitable provision has already been made or authorized for these localities.

This Department does not suggest that any change be made in the amount appropriated in the first paragraph of this bill, namely, \$250,000, as it is satisfied that the structures recommended can not be erected for that sum, but begs leave to suggest that the construction of the lights, etc., named in this letter be authorized, at a cost of not exceeding \$635,000, and that \$250,000 be appropriated for commencing the works in the order named.

Respectfully,

GEO. B. CORTELYOU,

Secretary.

The CHAIRMAN OF THE COMMITTEE ON COMMERCE,

United States Senate.

The CHAIRMAN. The next is the bill H. R. 8873, introduced by Mr. Acheson, to establish lights on the Monongahela River. You have made an unfavorable report on that bill and I take it that your judgment still is that there is no necessity for those lights?

Colonel LOCKWOOD. It is about the best lighted stream in the United States.

The CHAIRMAN. The next bill is H. R. 10447, introduced by Mr. Crumpacker for the establishment of a light-house at Indiana Harbor. You made an unfavorable report upon that bill?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. And the ground of your report was that that is a private harbor. I do not know, but I think it very likely that the Government may assume control of the harbor.

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. I do not know whether it is in the river and harbor bill or not, but I know they were seeking to have that done. If the Government should assume control of that harbor, would it not be proper for us to put a light-house there?

Colonel LOCKWOOD. It would be proper to provide some system of lighting it, but it would only be temporary at first until the point was settled whether the arrangement of the piers as at present would be retained.

The CHAIRMAN. I presume that if the Government does assume control of it, it would probably mean the building of an outer breakwater or something of that kind, because that is what would be needed eventually. The flow of the lake and the drift of the sand at this point is from the west toward the east?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. It fills up and makes a bar along the west side at that point in the lake, and they will have to protect it in some way. There is a considerable amount of shipping.

Colonel LOCKWOOD. So I understand.

The CHAIRMAN. At present there is an immense amount of ore—I go by there on the train between here and Chicago—they have an immense amount of ore piled up at Indiana Harbor now, and they are putting up an immense slag-cement plant. It is developing as far as business is concerned, very rapidly. I suppose that they absolutely need a light of some kind wherever they do endeavor to run into the shore?

Colonel LOCKWOOD. Yes, sir. If they are going to run in at night they need it absolutely, of course, but the position that the Board took was—

The CHAIRMAN (interrupting). I think the position the Board took was eminently proper.

Colonel LOCKWOOD. If the Government assumes charge there the proper aids to navigation could be established from the general appropriation for repairs, together with provisions for beacons and pierhead lights, which would be inexpensive to start with, but which could be replaced.

The CHAIRMAN. The next bill is H. R. 12150, to establish storm-warning stations at St. James, Beaver Island, Lake Michigan.

Colonel LOCKWOOD. That does not come under the Light-House Establishment.

The CHAIRMAN. I think we carried that item in the bill.

Colonel LOCKWOOD. That comes under the Agricultural Department.

The CHAIRMAN. We carried one appropriation of that sort.

The next bill is H. R. 12837, to establish a light-house and fog-signal station at the entrance to Bellingham Bay, State of Washington.

Colonel LOCKWOOD. That is up in the northern part of Washington.

The CHAIRMAN. We reported favorably on that bill, or a Senate bill, for the same thing. I think it is now on the Union Calendar of the House. That is something which is needed?

Colonel LOCKWOOD. It is a light to be established up where the country is developing very rapidly and the shipping interest increasing every year, and the Board deemed it necessary, or at least desirable.

The CHAIRMAN. You made quite a lengthy report on this bill last year; that is, several pages long. It seems to me, from reading the report, that you were not very certain that you knew just where to put such a thing if you had the authority?

Colonel LOCKWOOD. There was some doubt as to that. I remember, now that you speak of it. That is practically the joint report that was made by the district officers about that location. That was their impression at the time, but the report does not seem to be very aggressive.

The CHAIRMAN. No; it did not seem to me that it was.

The next bill is H. R. 13216, introduced by Mr. Alexander, and provides for four range lights at Strawberry Island shoal cut and channels leading to them in the Niagara River, the cost not exceeding \$13,000. I do not find any special report on that bill, although you have it mentioned in your report, on page 129. You think that range lights are necessary there? Is there much shipping there before you can put down buoy lights in the spring?

Colonel LOCKWOOD. No, sir; not very much. I would not like to say much about that, Mr. Chairman, in view of the fact that a changed condition is contemplated there in reference to this barge canal. That matter has come up as to the entrance to the Niagara River. If that measure goes through it is possible that these range lights would not be needed; that is, in case this improvement was ever made.

The CHAIRMAN. You mean the Erie Canal?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. There is every likelihood that the improvement will progress, at least?

Colonel LOCKWOOD. Yes, sir. I would not think that item of first importance.

The CHAIRMAN. The next bill is H. R. 14041, for the construction of light-house keepers' dwellings at Buffalo Harbor, New York. Did we cover that in the appropriation bill?

Colonel LOCKWOOD. I do not think that has been provided for. There are no quarters for them, practically.

The CHAIRMAN. As I remember that matter, the light-house is off shore?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. And it is thought necessary to have a light-house keepers' dwelling right at the edge of the pier, or something of that sort?

Colonel LOCKWOOD. There is land there.

The CHAIRMAN. This is the main entrance to the Buffalo Harbor?

Colonel LOCKWOOD. Yes, sir. These keepers have charge of the lights at the main opening through the breakwater coming into Buffalo Harbor, and the quarters would be built on the Government land right south of the entrance to Buffalo Creek and the interior harbor.

The CHAIRMAN. As it is now, even with the new light-house keepers' dwelling where it proposed, they would still have to row to and from the light station?

Colonel LOCKWOOD. Yes, sir. We could not build quarters out on the pier. The salaries paid to the keepers are \$560 and \$450 a year.

The CHAIRMAN. I judge they now have no dwelling provided for them?

Colonel LOCKWOOD. No, sir. They rent their own quarters and pay their own expenses.

The CHAIRMAN. You think this is necessary?

Colonel LOCKWOOD. I do not think there is any question about that.

The CHAIRMAN. The next bill is H. R. 14787, introduced by Mr. Roberts, to provide for submarine signaling in the Light-House Establishment. Do you not think that these people who have a patent on this thing can afford to do their own experimenting?

Colonel LOCKWOOD. They are after the Board all the time. The Board has their apparatus installed on several light-ships and they have tried to get it installed in light-house stations on shore, but the Board has declined to let them in there.

The CHAIRMAN. Why do you not let them in?

Colonel LOCKWOOD. Because there is no room for them, in the first place.

The CHAIRMAN. Why is it not feasible for you to experiment with their apparatus without any appropriation; with their consent, I mean?

Colonel LOCKWOOD. We have been allowing them to put the apparatus on the light-ships, and the idea was that the Board could make the investigation itself better than if it took their apparatus and their men.

The CHAIRMAN. You do not wish to confine yourself simply to investigating their apparatus?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. They have a patented apparatus?

Colonel LOCKWOOD. Yes, sir. They have an apparatus that involves the striking of a bell under water. Then the sound is conveyed to a vessel that has a receiver fastened to the ship, to the pilot house, and they put this arrangement up to their ear like a telephone, and they can hear the bell. I have been to the laboratory in Boston, and officers of the Board have gone around to Boston from New York and passed light-ships which had the apparatus aboard, and heard the signals. I can not talk very intelligently about that.

The CHAIRMAN. They told us last year that they could tell both the distance from which the sound came and the direction?

Colonel LOCKWOOD. They got an idea of the direction in this way: They would have a receiver, and if they were running off so there was nothing between the receiver and the bell they would get it louder than if a vessel was ahead. Then they would cross the other way, so the receiver was on the lee side. If they put one on either side and then change the course of the ship they know by the comparative loudness of the signal they receive where it is, within a point.

The CHAIRMAN. They change the course of the ship?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. And it is on the same theory that a man would move his ears around?

Colonel LOCKWOOD. Yes, sir; pretty much. I do not know much about it. I know the naval officers of the Board were quite anxious to test that in an independent way, not confining themselves merely to this apparatus.

The CHAIRMAN. The next bills are H. R. 14832 and S. 5418 for a light-ship near the eastern end of Hedge Fence shoal at the entrance to Vineyard Sound, Massachusetts. That was not carried in the sundry civil act?

Colonel LOCKWOOD. No, sir; the location is about nine miles from the Cross Rip light, and it marks a long narrow shoal near the western end of the sound that is very dangerous. It is a comparatively short distance from this Hedge Fence shoal to the light at West Chop, Marthas Vineyard. It would form one of a series of light-ships to guide vessels on the inside course from New York to Boston.

The CHAIRMAN. This is on the inside course from New York to Boston?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Through the sound?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. How many light-ships have we there now?

Colonel LOCKWOOD. We have five light-ships there now, including the one north of Cape Cod.

The CHAIRMAN. This is not regarded as so important as the light-ship at Brunswick Shoal?

Colonel LOCKWOOD. I have already told you what Captain Sebree said about that situation.

The CHAIRMAN. But do you regard this as an important matter?

Colonel LOCKWOOD. Yes, sir; there is no question about that. The navigation through there is very congested, and in thick weather they are all tangled up. They take long tows of coal through there.

The report is as follows:

The Committee on Commerce, to whom was referred the bill (S. 5418) to construct and place a light-ship near the eastern end of Hedge Fence Shoal, at the entrance to Vineyard Sound, Massachusetts, having considered the same, report thereon with a recommendation that it pass without amendment.

The bill has the approval of the Commerce and Labor Department, as will appear by the following letter:

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, April 13, 1904.

SIR: This Department has the honor to acknowledge the receipt of a letter of April 8, 1904, from your committee, inclosing a copy of S. 5418, "To construct and place a light-ship near the eastern end of Hedge Fence shoal, at the entrance to Vineyard Sound, Massachusetts," on which suggestions are asked touching the merits of the bill and the propriety of its passage.

In reply this Department begs leave to inclose House Document No. 142, Fifty-eighth Congress, second session, being the letter of December 16, 1903, from the Secretary of the Treasury to the Speaker of the House of Representatives, relative to an estimate of \$100,000 for the establishment of the light vessel in question, and the letter of December 14, 1903, from the Secretary of Commerce and Labor to the Secretary of the Treasury, giving in detail the urgent reasons for the placing of a light vessel near the eastern end of Hedge Fence Shoal.

In view of the foregoing, showing the need of this aid to navigation, this Department, in concurrence with the Light-House Board, recommends the passage of this bill providing, at an expenditure not to exceed \$100,000, for the establishment of a light-vessel on Hedge Fence shoal, Vineyard Sound, Massachusetts.

Respectfully,

LAWRENCE O. MURRAY,
Acting Secretary.

The CHAIRMAN OF THE COMMITTEE ON COMMERCE,
United States Senate.

Following are the letters above referred to as printed in House Document No. 142:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, December 16, 1903.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Secretary of Commerce and Labor of the 14th instant, submitting an estimate of appropriation for the establishment of a light-vessel near the eastern end of Hedge Fence shoal, at the entrance of Vineyard Sound, Massachusetts, \$100,000.

Respectfully,

L. M. SHAW,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, December 14, 1903.

SIR: This Department, at the instance of the Light-House Board, has the honor to recommend that an appropriation of \$100,000 be made for the establishment of a light-vessel near the eastern end of Hedge Fence Shoal, at the entrance to Vineyard Sound, Massachusetts.

The Boston Chamber of Commerce, in its letter of October 21, 1903, asks that this light-ship be established, stating that "for many years it has been earnestly desired by all shipping interests availing themselves of the route through Vineyard Sound, and the necessity for it has increased with the increase of traffic, both in number and size of vessels."

The Chamber of Commerce further states that "it is 14½ miles from the Cross Rip light-ship to the light at West Chop, Marthas Vineyard, and in weather at all thick the approach to Hedge Fence shoal from the east is exceedingly dangerous, so much so that steamers and large vessels usually anchor and wait for a change in conditions. The depth of water in the approach to Hedge Fence

Shoal is such that little or no indication is given of its proximity until a vessel is practically upon the shoal. It is easily the most dangerous spot, so far as lack of aids to navigation is concerned, in the entire route from Pollock Rip through the Sound."

The Inspector of the Second light-house district, Commander C. W. Bartlett, U. S. Navy, in his letter of October 26, 1903, states that "I consider that this light-vessel would be a great aid to navigation, as this is a thoroughfare which is used by the greater part of the shipping from Boston bound south, and is used in all kinds of weather, especially by passenger steamers."

Respectfully,

GEORGE B. CORTELYOU, *Secretary.*

THE SECRETARY OF THE TREASURY.

The CHAIRMAN. The next bill is H. R. 17348, for the establishment of a light-house on or near Southwest bar shoals, off the south end of Pooles Island, in Chesapeake Bay, Maryland. I will say that we have already reported and have pending in the House bills for light-houses and fog signals at Cherry Point shoal, Piankatank River. Is not that off Chesapeake Bay?

Colonel LOCKWOOD. Yes, sir; but away to the southward.

The CHAIRMAN. And Pungoteague Creek, Chesapeake Bay?

Colonel LOCKWOOD. Those are comparatively small appropriations, if I remember.

The CHAIRMAN. Yes, sir; I think so. This bill carries an appropriation of \$75,000.

Colonel LOCKWOOD. There is a good deal of commerce which goes by there, a great deal of passenger traffic, and the only kind of a light that can be established there is a caisson light.

The CHAIRMAN. Is this passenger traffic the passenger traffic between Baltimore and Newport News and Old Point Comfort?

Colonel LOCKWOOD. No, sir; it is northward and across to the eastern shore from Baltimore and all through that section of the country.

The CHAIRMAN. This is at the north end of the bay?

Colonel LOCKWOOD. It is just almost due east from Baltimore, possibly a little to the north.

The CHAIRMAN. Do you not think they could get along without this?

Colonel LOCKWOOD. I do not rank that as absolutely essential. It is a very desirable light.

The CHAIRMAN. The next bill is H. R. 17706, introduced by Mr. Kalaniana'ole, to provide for the building of a new light-house and range lights at Honolulu Harbor, Territory of Hawaii, the cost not to exceed \$40,000. Can you build a light-house at Honolulu for \$40,000?

Colonel LOCKWOOD. That is a low light.

The CHAIRMAN. What do they have there now?

Colonel LOCKWOOD. They have an old light. You go up into the channel and make a turn off to the left going in and right on the elbow is this old light on the ledge. It is in a very dilapidated shape, and it has to come down because the improvements planned by the Engineer Department for this harbor will cut off their sight. Then the range lights are now very unsatisfactory. There are a couple of lights in the city stuck up on buildings, one on the custom-house.

The CHAIRMAN. You regard this, then, as a necessary improvement?

Colonel LOCKWOOD. Yes, sir; very necessary.

Mr. WANGER. Necessary to complete the system of range lights for the harbor?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Especially because they have to move it anyhow?

Colonel LOCKWOOD. Yes, sir. It would not stand but a little while anyway.

The CHAIRMAN. The next bill is H. R. 17707, introduced by Mr. Kalanianole, for the establishment of a light-house at Makapuu Point, on the island of Oahu, Territory of Hawaii, carrying an appropriation of \$60,000?

Colonel LOCKWOOD. That, in the opinion of the naval officers who have been there, is a very necessary light, for the reason that vessels going from our western coast to Honolulu have no light to make to guide them, and this would be the first point they pick up on their regular course from Portland or the south down. That would be a coast light.

The CHAIRMAN. A warning light?

Colonel LOCKWOOD. Yes; it is very essential.

The CHAIRMAN. You say that all the deep-sea commerce between Honolulu and Puget Sound, the Pacific coast of the United States, Mexico, and Central America, including Panama, passes Makapuu Head, and that there is not a single light on the whole northern coast of the Hawaiian Islands?

Colonel LOCKWOOD. That is the situation exactly. They go into that neighborhood, and they have to lay up and wait until morning. They dare not run in too close anyhow.

The CHAIRMAN. The next bill is H. R. 18427, introduced by Mr. Gardner, for the establishment of an automatic signal at Bakers Island, Salem Harbor, Massachusetts.

Colonel LOCKWOOD. "Automatic" is wrong. There are no such things as automatic fog signals in the proper meaning of the term.

The CHAIRMAN. This should be a fog signal?

Colonel LOCKWOOD. Yes, sir. The automatic refers to the arrangement for regulating the length of the blast. It is merely secondary; you have to get up steam.

The CHAIRMAN. This should be a steam fog signal?

Colonel LOCKWOOD. No, sir; just a fog signal.

The CHAIRMAN. What is the necessity for this?

Colonel LOCKWOOD. It is said that place is used for the purposes of refuge a great deal by coal tows going up to the coast of Maine. The matter has been agitated for some time.

The CHAIRMAN. Are there a good many coal tows going up there?

Colonel LOCKWOOD. There are a good many coal tows that go up to Maine and go near there. How many would go in there in the course of a year I can not say.

The CHAIRMAN. There is a light-house there now?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. And this is simply to put up a fog signal in connection with the light-house?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Why will it cost \$10,000?

Colonel LOCKWOOD. It is separated from the light-house some distance.

The CHAIRMAN. Would it require a keeper's dwelling?

Colonel LOCKWOOD. Yes, sir. A keeper's dwelling and the house for the fog signal and the machinery.

The CHAIRMAN. How many keepers will it require—one or two?

Colonel LOCKWOOD. If it is entirely isolated from the light-house it might require two; if it is a separate thing it would require two.

The CHAIRMAN. There are several bills pending before the committee for light-house tenders?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. Last year in the sundry civil bill we provided for a new light-house tender for the Fourth district, at a cost of \$125,000, a new tender for the Sixth district, at a cost of \$130,000, and a new tender for the Eleventh district, at a cost of \$140,000. Do we need some new tenders in addition to those?

Colonel LOCKWOOD. Yes, sir. The tender in Third district is intended to replace the *Cactus*, which the Light-House Board got from the Navy Department many years ago, at the close of the war. She is all that her age would imply. She is not large enough or strong enough to go out in bad weather. As a matter of fact, at certain seasons of the year the inspector has to keep one, if not more, tenders ready at New York in order to keep the aids to navigation there in proper condition.

The CHAIRMAN. The Third district; the *Cactus* has its headquarters at New London, Conn.?

Colonel LOCKWOOD. She attends to buoys up at the eastern end of the district.

The CHAIRMAN. How many tenders do you have to a district?

Colonel LOCKWOOD. It varies. I do not know much about the inspection part of the work. The engineer in the Third district has two large tenders and a little one that runs up to Lake Champlain. The engineer of the First and Second districts has one tender. The engineer of the Fourth district has none; the engineer of the Fifth district has one; the engineer of the Sixth district has none; the engineers of the Seventh and Eighth districts each have a tender, and the Ninth, Tenth, and Eleventh districts.

The CHAIRMAN. What are the duties of a tender?

Colonel LOCKWOOD. The inspectors' tenders are occupied chiefly in inspecting light-house lights. The inspector is required to inspect every quarter, and the principal thing is attending to the buoys. The engineer tender takes the supplies around to the different light-houses where repairs are being made.

The CHAIRMAN. What is the difference between the engineer tender and the tender to make repairs, etc?

Colonel LOCKWOOD. That is the engineer tender, to make repairs?

The CHAIRMAN. What other tender is there?

Colonel LOCKWOOD. The inspector's tender, that attends to the buoys. They have to shift them around and paint them.

The CHAIRMAN. What is the difference between the duties of an inspector and an engineer?

Colonel LOCKWOOD. The engineer has to do with construction and repair of permanent aids on shore. The inspector has to do with all floating aids and with the inspection and pay of keepers of lights after they are built by the engineer and turned over to him.

The CHAIRMAN. That is, the engineer simply looks after construction work?

Colonel LOCKWOOD. And repairs.

The CHAIRMAN. And repairs in the light-houses themselves?

Colonel LOCKWOOD. Yes, sir; the permanent aids, as they are called, on shore, and the naval officer has charge of the buoy aids and the inspection of lights and the pay of keepers, supplies, and so forth.

The CHAIRMAN. Of course, if you are increasing the number of lights in the district you would require an engineer in the work of construction, but would you need to keep an engineer there simply on repair work in the district?

Colonel LOCKWOOD. There are few engineers in the Light-House Service who have not other works under the War Department.

The CHAIRMAN. Do we provide them with boats or does the War Department?

Colonel LOCKWOOD. Their duties are entirely separate. They have separate offices. They have their light-house clerks and they are entirely separate from the other outfit.

The CHAIRMAN. It is your judgment that the bills H. R. 15992 and S. 6003 for a new tender in the Third district at a cost not exceeding \$135,000 are quite necessary?

Colonel LOCKWOOD. Yes, sir; I think that is quite essential.

The CHAIRMAN. I notice there was no bill introduced at the last session of Congress for this. It is only a recent introduction.

Colonel LOCKWOOD. I know, sir; but that is the situation as near as I can explain it to you. The boats that are in use in the Third district by the inspector are with the exception of the *Larkspur* very old vessels.

The report is as follows:

The Committee on Commerce, to whom was referred the bill (S. 6003) to provide for the construction of a light-house and buoy tender for the inspector of the Third light-house district, having considered the same, report thereon with a recommendation that it pass without amendment.

The bill has the approval of the Department of Commerce and Labor, as will appear by the following letter:

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, December 21, 1904.

SIR: This Department has the honor to acknowledge the receipt of a letter dated December 13, 1904, from your committee inclosing a copy of S. 6003, appropriating \$135,000 "for the construction of a light-house and buoy tender for the inspector of the third light-house district," on which suggestions touching the merits of the bill and the propriety of its passage are asked.

In reply this Department begs leave to state that the Light-House Board, to whom the matter was referred, reports that the tender *Cactus*, which has its headquarters at New London, Conn., in the third light-house district, has been in continual use for nearly thirty-three years. She is now so worn that it is unsafe to use her in the open sea of Long Island Sound, except in the best of weather. It is doubtful if the inspector of hulls, or the inspector of boilers would authorize her use if they were required to examine and report upon her condition.

The following is an extract from pages 56 and 57 of the Board's annual report for 1904:

"*Cactus*.—This wooden side-wheel steamer of 200 tons gross burden was built for the Navy Department in 1863, and was transferred in 1865 to the Light-House Board. In doing her annual work the *Cactus* replaced 36, changed 219, painted

262, and recovered 13 buoys; delivered 3,055 gallons of oil, 636 tons of coal, 21 cords of wood, 36 barrels of lime, 949 packages of supplies and rations to 20 stations, and inspected 88 stations. She was at the New London, Conn., light-house depot repairing and painting buoys 72 days, moved light keepers 13 days, tended light-vessels 13 days, and was 35 days undergoing repairs. She steamed some 11,073 miles, and consumed about 496 tons of coal. She received needed fittings and supplies and proper repairs.

"The following recommendations made in the Board's last two annual reports is renewed:

"The *Cactus* was built for the Navy Department in 1863, thirty-nine years ago, and was transferred to the Light-House Service in 1865, where she has done good service. She has, however, become unseaworthy and unfit to perform the duties required of her—the maintenance of the buoyage from New Haven, Conn., to Providence, R. I. She should be replaced by a modern vessel as soon as practicable. It is unsafe to send her around Point Judith except under favorable conditions of sea and weather. It is equally risky to send her to any of the light-stations on Block Island or to any in the waters of the eastern end of Long Island. She is frequently delayed, waiting for safe weather for days, in the performance of urgent light-house service, and has been unable lately on several occasions to do routine work, which she could formerly do without difficulty. Inasmuch as light-house work must be done under circumstances where the use of a vessel in the *Cactus's* unsafe condition is hazardous to the lives of her officers and crew, it is desirable to build a tender somewhat similar to the *Mari-gold*, and provided with gas tanks to meet the requirements of the constantly increasing number of gas-lighted buoys in the eastern end of the Third light-house district. It is estimated that such a tender can be built at a cost of \$125,000, and the Board recommends that an appropriation of that amount be made therefor."

"In consequence of the increase in the cost of material and labor since the above estimate was made, it is now found that it will cost \$135,000 to replace the *Cactus*, and the Board therefore recommends that an appropriation of this amount be made therefor."

This Department therefore, in concurrence with the views of the Light-House Board, as formally expressed in its annual report, recommends the passage of this bill, which appropriates \$135,000 "for the construction of a light-house and buoy tender for the inspector of the Third light-house district."

Respectfully,

V. H. METCALF,
Secretary.

THE CHAIRMAN OF THE COMMITTEE ON COMMERCE,
United States Senate.

THE CHAIRMAN. I shall ask you when I get through with these bills, or now if you prefer, which district is in the greatest need of a new tender?

Colonel LOCKWOOD. I was in hopes you would ask me which two tenders were most necessary.

THE CHAIRMAN. I may do that afterwards, but I would like to know the other first, if it is possible.

We have here the bills S. 5146 and H. R. 14257, for the construction of a light-house tender in the Fourth light-house district. I suppose that is covered by the item in the sundry civil act of last year?

Colonel LOCKWOOD. No; that tender was for the inspector. This is for the engineer. He has no tender. That is entirely separate.

THE CHAIRMAN. If that light-house district could get along for a long time without any tender, do they now need vessels for both the inspector and engineer?

Colonel LOCKWOOD. The engineer has not any, but I think I can fix him up from another district.

THE CHAIRMAN. You think that might possibly wait for a little while?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. We have here H. R. 6478, introduced by Mr. Legare, to provide for the construction of a light-house tender for construction and repair service. That bill was referred to you in December, 1903, and you made a report upon it in which you said that it referred to the Sixth light-house district, and you reported that the "schooner *Pharos*, now in use as a light-house tender in the Sixth light-house district, has been pronounced by the inspector of hulls at the port of Charleston, S. C., unsafe at sea in all weathers," and recommended the passage of the bill. I find in the sundry civil act of last year that we provided for a new tender for the inspector, to take the place of the worn-out tender *Wistaria*. The present bill refers to a tender for the engineer?

Colonel LOCKWOOD. It is an entirely new matter.

The CHAIRMAN. And not covered by the other?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. This bill that Mr. Legare has introduced does not provide that it shall be a tender for the Sixth district. Is that a matter that ought usually to be left to the discretion of the Light-House Board?

Colonel LOCKWOOD. No, sir; it is generally designated.

The CHAIRMAN. Is there any special reason why it should be?

Colonel LOCKWOOD. None whatever; no, sir.

The CHAIRMAN. As a matter of fact, this bill was intended to provide for a new engineer tender in the Sixth district?

Colonel LOCKWOOD. That is my impression.

The CHAIRMAN. That was the report you made?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. How is that as to importance?

Colonel LOCKWOOD. That is not the most important.

The CHAIRMAN. If they got a new tender for the inspector could not they get along for a little while?

Colonel LOCKWOOD. The two are used entirely distinct and separate. They generally have to have their own boats.

The CHAIRMAN. There are two bills before us, S. 6183 and H. R. 17346, to provide for a new engineer tender in the Twelfth light-house district?

Colonel LOCKWOOD. Yes, sir; that is the engineer tender, and I am very strongly in favor of his getting it. I would put the Third district tender and the Twelfth district tender as the two most important tenders in the list.

The CHAIRMAN. We are providing, of course, for a good deal of additional improvement on the Pacific coast?

Colonel LOCKWOOD. Yes, sir; and they ought to have a tender.

The CHAIRMAN. Has he a tender?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. They have an inspector's tender?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. But no engineer's tender?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. We have had before us at different times a lot of bills providing for a lot of additional aids to navigation on the way up to Alaska.

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. How much do you know about that?

Colonel LOCKWOOD. I know this, that if the general appropriation was changed so that the Light-House Board could establish post lights through that section the same as is done on rivers, that is, inland navigation, we could get along very well and put up inexpensive post lights, but when it comes to establishing a light-house in that isolated locality it amounts to making an independent town for three or four people.

They are separated by distances varying from 30 to a hundred miles. They are not near any source of supply and the lights have to be taken care of from Portland, while if we put up these little lights we can hire a man possibly to look after them for comparatively a small amount and they will answer every purpose in that section where lights of great range are not needed.

The CHAIRMAN. The width of the water is not very great?

Colonel LOCKWOOD. In southeastern Alaska, no, sir; but, of course, when it comes to going out to the westward it is.

The CHAIRMAN. That is out to the ocean?

Colonel LOCKWOOD. There we have two lights. I was up there two years ago, and there is need of some provision that will permit the Board to put up the inexpensive post lights.

The CHAIRMAN. If you put up the post lights, would they be extinguished or would you let them burn?

Colonel LOCKWOOD. In some cases it is cheaper to establish the five-day lights and let them burn, and in other cases, if the employee is near at hand, we let him put them out.

The CHAIRMAN. I notice in the sundry civil act of last year that you have under the headings "Supplies of light-houses," "Repairs of light-houses," "Expenses of light-vessels," "Expenses of buoyage," "Expenses of fog signals," and some other headings identically the same item, reading "including the pay of officers and crews of light-house tenders, and of clerks and other employees in the offices of the light-house inspectors and light-house engineers, and at light-house depots?"

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. What is the object in putting that in so many different places?

Colonel LOCKWOOD. The object of that was to meet an objection made by the Comptroller with reference to paying the crews of vessels, etc. You see the expenses of these vessels are paid from the general appropriation, except in the case of light-vessels. You take the tenders, their expenses are paid from the appropriation annually for their work. The Comptroller was objecting, and indicated that a special appropriation for the pay of the crew, for instance, should be made. That would involve a great deal of trouble, because then no change could be made in the crew, and so the Board asked to have this provision put in. There is no trouble now.

The CHAIRMAN. That is to say, under the heading of "Supplies of light-houses" one of the expenses is paying the officers and crews?

Colonel LOCKWOOD. The officer and crew of the tender when engaged in delivering supplies.

The CHAIRMAN. How do you keep that segregated between when she is engaged in delivering supplies and otherwise?

Colonel Lockwood. They make an average between the different appropriations. They figure it up in this way—for instance, she is engaged in the course of a year practically twice as long under one appropriation as she is under another, and then she would pay about two to one. That is something that the inspectors and engineers settle themselves.

The CHAIRMAN. In reference to House bill 11132, introduced by Mr. Brandegee, relating to Black ledge, New London Harbor, Conn., what do you say about that?

Colonel Lockwood. That has been reported for a number of years. That is regarded as a very essential aid to navigation. That is one the Board has recommended.

The CHAIRMAN. How about House bill 12146, introduced by Mr. Jones, of Virginia, for an aid to navigation at Cherry Point shoal, Piankatank River, Va.; that is a part of Chesapeake Bay?

Colonel Lockwood. Yes, sir. I am not certain, Mr. Chairman, about that. I should have to look it up, but it just occurs to me that the engineer reported that he could get along without a special appropriation for it, and if you will allow me, I will look it up. Once in a while the engineer changes the recommendation of his predecessor by providing for a beacon or something of that kind, where a light had been recommended.

The CHAIRMAN. How about Pungoteague Creek, referred to on page 82 of the report?

Colonel Lockwood. That seems to be a desirable light and a necessary one.

The CHAIRMAN. That is now maintained at private expense?

Colonel Lockwood. Yes, sir.

The CHAIRMAN. And it is needed for the benefit of commerce?

Colonel Lockwood. Yes, sir.

The CHAIRMAN. That is covered by H. R. 12145.

The next item is Ragged Point, Potomac River, covered by H. R. 12144, introduced by Mr. Jones, of Virginia.

Colonel Lockwood. That is one of the points here on the river that the pilots have been complaining about for years, and, as you see, it has been recommended for eight years.

The CHAIRMAN. On page 78 of the report it says:

This shoal makes off from the west bank of the river at a short turning point. It is important that this point be marked by a light at night and a fog signal during thick weather. It is estimated a light and fog-signal station can be established there for \$20,000.

You have changed that on account of the price of material. The first recommendation was \$20,000 and was made six years before, and now you make that \$30,000?

Colonel Lockwood. Yes, sir.

The CHAIRMAN. You regard that as important?

Colonel Lockwood. Yes, sir.

The CHAIRMAN. The next item is Rock of Ages, Lake Superior, covered by H. R. 39.

Colonel Lockwood. That is a measure that the Vessel Carriers Association has persistently urged upon the Board for a number of years. It is one of the lights that is necessary to aid the commerce of the north shore of Lake Superior—the ore commerce. The compass is of no account there; it turns all around.

The CHAIRMAN. That is on account of the proximity of the iron ore, they can not rely on the compass?

Colonel LOCKWOOD. No, sir. They get all muddled up there somewhere. I do not know just where it is.

The CHAIRMAN. It is stated on page 147 of the report:

During the season of southerly and westerly winds many vessels bound to and from Duluth, by taking a course along the north shore of the lake and lee of Isle Royale, are enabled to run when the lake is too rough for the more southerly course. A light and fog signal on the dangerous rocks off the westerly end of Isle Royale would be a valuable aid to these vessels. It is therefore proposed to establish a light and fog signal station on the Rock of Ages, off the western end of Isle Royale.

It is now estimated that it will cost \$125,000 to establish this light and fog signal.

The original estimate for that was \$50,000?

Colonel LOCKWOOD. Yes, sir. That was quite a long time ago.

The CHAIRMAN. That was clear down to 1903?

Colonel LOCKWOOD. The district officers had not made any special examination of the locality when that first went in, Mr. Chairman, but it is difficult work to construct and it is a good long ways from any base.

The CHAIRMAN. You recommend, in place of making an appropriation for establishing a station, that an appropriation of \$25,000 be made for making a survey and examination and preparing detailed plans and estimates and beginning the work of construction?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. In other words, if we should authorize the construction of that light-house, when it came to making an appropriation, you would not need more than \$25,000 at present?

Colonel LOCKWOOD. Yes, sir; that is all. It might be that a thorough examination would develop the fact that the light could be built for less than that.

The CHAIRMAN. We have before us Senate bill No. 2685, providing for an additional light-house district.

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. What new district is that?

Colonel LOCKWOOD. There are two. One to take in all of Alaska and one for Porto Rico. There ought to be some such change as that, because now the headquarters of the district of Alaska are in Portland, Oreg., and that is a long ways from Alaska, and if the headquarters could be established at Juneau or Sitka or some centrally located point, the trouble with regard to the buoys and the little lights would be very much lessened. Porto Rico is a subdistrict of the Third district, New York.

The CHAIRMAN. The two districts proposed do not touch any of the continental coast?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. It is just Porto Rico and Alaska?

Colonel LOCKWOOD. Yes, sir. The Hawaiian Islands are already in the Twelfth district.

The CHAIRMAN. We have before us the bill H. R. 10773, introduced by Mr. Knapp, for a light-keeper's dwelling at Tibbetts Point, New York. What have you to say as to the necessity for that?

Colonel LOCKWOOD. It is one of a great many in about the same condition. There are more quarters required than we have in some cases, and in some cases there are no quarters. Tibbetts Point is no worse than a good many others.

The CHAIRMAN. You make the statement that last year you repaired the cistern and that the families of the two keepers are living in one small dwelling, much to the discomfort of both?

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. And "that a new dwelling for the assistant keeper is much needed. It is estimated that a proper structure could be built for not exceeding \$3,500, and it is recommended that an appropriation for this amount be made therefor." That is an old recommendation. Owing to the increase in the prices of labor and materials you change the estimate to \$4,000.

Colonel LOCKWOOD. Yes, sir.

The CHAIRMAN. This assistant keeper gets a salary, I suppose, not exceeding \$500 a year?

Colonel LOCKWOOD. He does not get that much. He probably gets \$450 or \$400.

The CHAIRMAN. The work is not hard?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. You do not have any difficulty in finding keepers?

Colonel LOCKWOOD. No, sir.

The CHAIRMAN. Is not a \$4,000 dwelling an expensive dwelling to provide him with? It is probably safe to say that heretofore he lived in a dwelling that did not cost over \$500.

Colonel LOCKWOOD. The price fixed in the Senate was \$3,500. Mr. Allison insisted on that. The cost of those houses has practically doubled in the last twenty-five years. That is the trouble.

Mr. WANGER. They build better houses.

The CHAIRMAN. That is the reason.

Colonel LOCKWOOD. The cost of keeping one of those cheap houses in repair is a good deal.

The CHAIRMAN. If a man who is a light-house keeper and has nothing else to do does not keep his own house in repair he is taking advantage of you?

Colonel LOCKWOOD. We do not get a very high order of intelligence.

The CHAIRMAN. But they have intelligence enough to keep the house in fair repair if they know they have to do it, but if every time the plaster falls off or something of that kind occurs they can ask the inspector or the engineer to have it fixed at the Government's expense, that is different.

Colonel LOCKWOOD. I have not any doubt that experiment has been tried, and I think they are not allowed to make any changes in the quarters as a result of that experience.

The CHAIRMAN. How about the proposition to put a light-house or other aid to navigation on the Midway Island? What is the necessity for that?

Colonel LOCKWOOD. That is a cable station.

The CHAIRMAN. It is a private cable station?

Colonel LOCKWOOD. Yes, sir. The matter was turned over some time ago to the Light-House Board and the light was placed there by Executive order, and the Board has prepared an estimate of what

it thinks is necessary in view of that fact. The naval officers of the Board can tell you more of the necessity for lighting that place. I think it is about 1,200 miles to the west of the coast.

The CHAIRMAN. It is 1,160 miles northwest of the Hawaiian Islands. There is no commerce or population, except the cable operators.

Colonel LOCKWOOD. I think they want to light it to keep away from it.

The CHAIRMAN. No; what they want to light it for is so that they can go to it in connection with the cable operations, and very properly. The Postal Cable Company, in order to keep their cable on American soil all the way over, ran by the Midway Island instead of going down by one of the German Islands on a southerly course. Now, the cable ships go there. There is no harbor there, no light, no wharf, no decent landing place. It may be proper that we should put it there. What I am getting at is, what is going to be the expense? It is 1,160 nautical miles (over 1,200 miles) from Honolulu. How often will we have to send an inspector or engineer tender up there?

Colonel LOCKWOOD. We have not any tender that would answer in those waters. None except one that is used on the Atlantic coast.

The CHAIRMAN. I would like to know whether, after we drive in this wedge, we will split it wide open by being compelled to build a half-million-dollar vessel to go up to that place?

Colonel LOCKWOOD. At the present time the naval officer stationed at Honolulu, Lieutenant Niblack, makes regular visits to the Midway Island.

The CHAIRMAN. How does he go there?

Colonel LOCKWOOD. He goes there in a naval vessel. He is operating under the Navy Department in that particular, and I do not know what he goes out there for. He has a fairly good-sized man-of-war. Anything put there is bound to be very expensive, because there is no harbor. There is just a little opening in the coral reef. It is a very unsatisfactory place.

Thereupon the subcommittee adjourned.

WEDNESDAY, February 15, 1905.

The subcommittee met this day at 10 o'clock a. m., Hon James R. Mann in the chair.

The CHAIRMAN. Colonel Lockwood, of the Light-House Board, has sent to me several statements or letters in answer to suggestions and questions which were submitted at the last hearing, and they will now be put in the record and printed.

DEPARTMENT OF COMMERCE AND LABOR,
LIGHT-HOUSE BOARD,
Washington, February 13, 1905.

HON. J. R. MANN, M. C.,

Chairman Subcommittee on Light-Houses,
Committee on Interstate and Foreign Commerce,
House of Representatives.

SIR: In answer to your oral request made this morning in your committee room. I inclose you herewith certain papers with regard to Point Cabrillo, Cal. Respectfully,

D. W. LOCKWOOD,
Lieutenant-Colonel, Corps of Engineers,
U. S. Army, Engineer Secretary.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, January 21, 1905.

The CHAIRMAN OF THE COMMITTEE ON COMMERCE,
United States Senate.

SIR: This Department has the honor to acknowledge the receipt of a letter dated January 17, 1905, from your committee, inclosing a copy of Senate bill No. 6648 "To establish a light and fog-signal station near Point Cabrillo, California," on which suggestions are asked touching the merits of the bill and the propriety of its passage.

In reply this Department begs leave to state that the Light-House Board, to whom the matter was referred, reports that a light-house near Point Cabrillo would be of great assistance to navigation between Point Arena light-house and Cape Mendocino light-house, California, a distance of 115 miles, which is without a light or fog signal for that entire distance. The large vessels which traverse the coast usually keep well out, using Point Arena and Cape Mendocino or Punta Gorda as points of departure, but the smaller craft that transport the commerce of the small landings along the coast to the northward of San Francisco, which has now assumed quite large proportions, must feel their way as best they can close along inshore. During northerly and easterly weather it is to the advantage of all vessels going up the coast to keep well in under the lee of the land. For the benefit particularly of these a light and fog signal here is desirable.

The establishment of this light and fog-signal station, for the erection of which many petitions have been received, would enable vessels bound for Mendocino City to lie off the shore and hold on to the light or fog signal instead of running the risk of entering that harbor at night or in foggy weather. After a careful examination of various sites, that at Point Cabrillo is considered the most advantageous.

The Light-House Board at its session on October 3, 1904, recommended the establishment of a light and fog-signal station at or near Point Cabrillo, California. This Department, concurring with the Board, recommends the passage of this bill.

Respectfully,

V. H. METCALF, *Secretary.*

DEPARTMENT OF COMMERCE AND LABOR,
LIGHT-HOUSE BOARD,
Washington, August 12, 1904.

The LIGHT-HOUSE BOARD.

SIRS: The committee on location, to whom were referred on August 5, 1904, the papers relative to the establishment of a light and fog signal at Point Cabrillo, California, returns them with the following report:

Your committee, in accordance with the views of the inspector and engineer of the twelfth light-house district in their joint report of July 30, 1904, recommends the establishment of a light and fog signal at Point Cabrillo, about 4 miles to the northward of the entrance to Mendocino Bay, California.

Respectfully,

GEO. C. REITER,

Captain, U. S. Navy, Chairman of the Committee on Location.

DEPARTMENT OF COMMERCE AND LABOR,
LIGHT-HOUSE BOARD,
Washington, February 13, 1905.

Hon. J. R. MANN,

Chairman Subcommittee on Light-Houses.

*House Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

SIR: Referring to your oral question asked this morning of me in your committee room, I beg to state that the Light-House Board has erected a beacon at the mouth of the Planktank River, Chesapeake Bay, Virginia, and hence it is unnecessary to pass the bill making appropriation for the erection of the Planktank light.

Respectfully,

D. W. LOCKWOOD,
*Lieutenant-Colonel, Corps of Engineers, U. S. Army,
Engineer Secretary.*

DEPARTMENT OF COMMERCE AND LABOR
LIGHT-HOUSE BOARD,
Washington, February 13, 1905.

Hon. J. R. MANN,
*Chairman Subcommittee on Light-Houses,
House Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

SIR: In reply to your oral question asked me this morning in your committee room as to the proper arrangement of aids to navigation in Delaware River in the order of their importance, I beg to state that the engineer of the fourth light-house district is of opinion, and in that opinion the Board concurs, that they should be arranged as follows:

1. Goose Island, light-house and fog signal.....	\$85, 000
2. Horseshoe Shoal, light-house and fog signal.....	50, 000
3. Joe Flogger Shoal, light-house and fog signal.....	75, 000
4. Miah Maul Shoal, light-house and fog signal.....	75, 000
5. Browns Shoal, light-house and fog signal.....	80, 000
6. Arnold Point Shoal, light-house and fog signal.....	85, 000
7. Old Mans Point, range lights.....	40, 000
8. Marcus Hook, range lights.....	70, 000
9. Edgemoor light-house depot, keeper's dwelling, etc.....	6, 000

Respectfully,

D. W. LOCKWOOD,
*Lieutenant-Colonel, Corps of Engineers, U. S. Army,
Engineer Secretary.*

DEPARTMENT OF COMMERCE AND LABOR,
LIGHT-HOUSE BOARD,
Washington, February 13, 1905.

Hon. J. R. MANN, M. C.,
*Chairman Subcommittee on Light-Houses,
Committee on Interstate and Foreign Commerce,
House of Representatives.*

SIR: Referring to the oral question asked me when before your committee this morning, I beg to state that the cost of maintaining the Cape Elizabeth, Maine, light-vessel for the calendar year was \$8,524.93. This is a typical light-vessel and answers your question as to the cost per year of maintaining a light-vessel.

This amount is purely maintenance. No repairs were made on her, she being a new ship, during that year.

Respectfully,

D. W. LOCKWOOD,
*Lieutenant-Colonel, Corps of Engineers, U. S. Army,
Engineer Secretary.*

**STATEMENT OF HON. JAMES N. GILLETT, A REPRESENTATIVE
FROM CALIFORNIA.**

The CHAIRMAN. Mr. Gillett, we will be very glad to hear a statement from you.

Mr. GILLETT. There are three bills here that I want to call attention to. There is only one of them, however, that I know much about. I will first take up Senate bill No. 4004. This is a bill introduced in the Senate by Senator Perkins. About this bill I do not know much.

The CHAIRMAN. That is a bill for accommodations for the light-house keeper at Cape Mendocino?

Mr. GILLETT. Yes; I pass it many times a year. It is in my county, but I do not know much about it. You would have to get information on that from those who do know. It is a very important light-house on the coast and is in an exposed position, where the wind howls around there at a great rate.

The CHAIRMAN. What is the pressing necessity for the new light-house keeper's dwelling?

Mr. GILLETT. I told Senator Perkins that I would bring it up. I know they already have small buildings there, because I have seen them a number of times each year. It is not far from where I live. I suppose those buildings are old, because that is one of the oldest light-houses on the coast, on the point that is farthest west, which all vessels pass that come in, going north and south, and a great many vessels sight Cape Mendocino coming from China and Japan. It is likely that the buildings are old. They have been there a good many years, but personally I do not know much about it. Although, as I say, I have been within 200 yards of it many times every year, I never was upon the premises.

Here, however, is a bill that I know all about, No. 4005—that is, Senate bill No. 4005.

The CHAIRMAN. That is a bill for a fog signal at Humboldt Bay, California?

Mr. GILLETT. Yes. I know the necessity for this a great deal more than do the people who wrote the report. Humboldt Bay I know very well. I live upon it, and within 3 miles of where this fog-signal station will be erected. There used to be one on the North Spit, and about twelve years ago the Government removed it to Table Bluff Point, about 12 miles north of it. They have built jetties out about a mile and a half into the ocean, running parallel to each other and in a northwesterly direction. At the end of these jetties, out in the ocean, is a bar, and in that vicinity there is a bell buoy and whistling buoy.

This is a very foggy place, and at times it is quite calm. I go back and forth there frequently on the steamer from San Francisco, and we have to get over this bar by steamer. I have come over there many times when there was a heavy fog and the wind blowing violently. The coast runs like this [indicating on a rough sketch]. Here is Cape Mendocino, here is Table Bluff, and out here is the bar. The winds, the trade winds, come out like that—northwest and southeast. These jetties run away out, and they are submerged under the water, except here, close to shore. I have been by there on a foggy morning when they would have to feel their way along, and the wind would carry away the sound of that whistle and you would not hear it at all, and you were liable to run up against these jetties. What we want is a fog signal right here [indicating] where the danger point is. There are a couple of buoys here [indicating], but when it is calm you do not hear them.

The CHAIRMAN. What kind of buoys?

Mr. GILLETT. One is a whistling buoy and the other a bell buoy. But we want a fog signal.

The CHAIRMAN. You want a steam fog signal in addition?

Mr. GILLETT. Yes. Two of three thousand ships and vessels go out there each year from Eureka to San Francisco, and to Australia, and some round the Horn and up to Portland, Oreg. There are more than 2,000 vessels running right out of there—that is, arrivals and departures. There is big shipping there. This is a dangerous bar, too, and, while there is 30 feet of water, sometimes the tide drifts strongly and if you get too close you may get broadside to these seas, and it is a dangerous point. But if there were a fog

signal near by it would be a great deal safer. There is a greater necessity for one there than I ever saw in the ocean. There is a steamer line running from San Francisco to Portland, and there are some steamers that go in daily to San Francisco; and in the last two or three years several steamers have been lost right on that bar.

The CHAIRMAN. Would these existing buoys be required if you had that new fog-signal station?

Mr. GILLETT. Yes; they would be required for this reason; I will show you exactly how it is necessary for them.

The CHAIRMAN. It is not necessary to say much about the reason. It is only necessary to say whether you can dispense with them or not.

Mr. GILLETT. You have got to find those two buoys and get your position between them and then run on the course. You can not see the breakwater or the fog-signal station, but if you can find those two buoys you can get in between those two and set your compass and go right in. It is very essential, indeed, that they should be there.

The CHAIRMAN. What is your other bill?

Mr. GILLETT. The other bill is a bill that Mr. Metcalf wanted me to present. He had it prepared for me. That is the bill No. 17346.

The CHAIRMAN. For Cabrillo?

Mr. GILLETT. Yes. That is House bill No. 17346.

The CHAIRMAN. That is for a light-house tender?

Mr. GILLETT. Yes. That was sent to me with a request that I introduce it. I saw a document in the clerk's office recommending that this be built, because they have not sufficient service there now on the coast. The Naval Committee would know all about it. Mr. Metcalf explained it to me.

The CHAIRMAN. What does the Naval Committee know about light-house tenders? I do not think they know anything about it.

Mr. GILLETT. Not the Naval Committee, but I mean those officials at the Treasury who have that matter in charge.

The CHAIRMAN. Of course, we have been over that.

Mr. GILLETT. That is something that I do not know anything about, because I have not given it any study. I was requested to introduce the bill, and I did. They tell me it is necessary. Mr. Metcalf had the bill prepared and sent it to me. This is the bill that was prepared by him.

The CHAIRMAN. Now, we have a large number of bills for additional aids to navigation under the Light-House Board on the Pacific coast. One is for additional employees' quarters at Robinsons Point post light, State of Washington. That is the Senate bill No. 3983. Then one is for a fog signal at Quarry Point, on Angel Island, Bay of San Francisco, California. That is Senate bill No. 4003. Then there is one for Cape Mendocino, to which you referred, and one for a fog signal at Humboldt Bay, to which you also referred, and there is one for a keeper's dwelling at Point Bonita, California. That is Senate bill No. 4007.

Mr. GILLETT. Yes.

The CHAIRMAN. Then there is one for a light-house near Santa Barbara landing, California, Senate bill No. 6181, and one for a light-house and fog signal at Red Rock, San Francisco Bay, Senate bill No. 6182; also one for a light and fog signal near Point Cabrillo,

Senate bill No. 6648. In addition to those there are several House bills, the most important of which is the one to which you have last referred, for a tender.

Mr. GILLETT. Yes, sir.

The CHAIRMAN. Now, in the present condition of receipts and expenditures of the Government—

Mr. GILLETT. I see that we have been gaining a little in the last week or two. Is that helping you any?

The CHAIRMAN. It is not probable that all of these will be reported. Your very distinguished and eloquent Senator from California [Mr. Perkins] takes a great interest in commercial matters, and particularly in commerce relative to sea navigation, and he has been quite industrious—

Mr. GILLETT. Oh, yes; he is very active—

The CHAIRMAN. In urging various of these measures. Now, if our committee should determine not to report all of these bills, which in your judgment are the most meritorious—the ones to which you have called our attention? Are you familiar with these others at all?

Mr. GILLETT. I am not familiar with them at all. Frankly, I am not familiar with any of them except this in relation to the fog signal there; and I know personally, from being in there and being lost in the fog and with the fear of the seas around me, and I can see an urgent necessity for that, and I think it would not only be very desirable to put it there, but it would be a criminal negligence not to put it there. If you had to cross there as often as I do with your hair standing on end I think you would admit the necessity at once.

The CHAIRMAN. I can stand the hair standing on end, but—

Mr. GILLETT. Last summer we got in pretty close, and got to where we had to go through and a great wall of green sea piled up, and I was up on deck and could see that that green wall rounded up under us and commenced to break, and we were 25 or 30 feet in the air. I got a little soaked and the vessel lay on its side. What we want is to have a fog signal there, so that when you come in you can hear it, even when the fog is thick. Our trade winds blow from the northwest to the southeast, and the wind blows right inland away from us, and on a foggy morning you could not hear the bell buoy or whistling buoy at all.

The CHAIRMAN. Which is the most important of these propositions which you have mentioned—Cape Mendocino, the light-house tender, or the fog signal?

Mr. GILLETT. As to Cape Mendocino, I say I do not know anything about it except this, that they have been living there already, and might live there another year. They might be cramped a little, but I would not say that that is of much importance, because they have been living there under the conditions which obtain at present for some time.

As to the light-house tender, I do not know what the conditions are. Mr. Metcalf says it is important that it should be there. He thinks the service is not now sufficient to properly supply the light-houses on the coast up to San Francisco. We are 250 miles from San Francisco, and he says they have not service sufficient to do the work.

As to the fog signal, I repeat there is constant danger to life out on that bar. In the summer time when we have a fog there is the greatest danger.

The CHAIRMAN. Do you have a fog there much of the time?

Mr. GILLET. Nearly every morning in the summer time. It clears up sometimes in the day, but I have seen fogs for fifteen days steady. You see, there is a big bight there. Then there is a forest on shore, and that is supposed to be one reason why the big trees are there, for as soon as you get out of the fog belt you get out of the redwood belt.

I think that bill for the fog signal is very important. The old light-house that they wanted to take away—the sea kept washing away the north spit. They had a light-house and fog signal at that point. They moved it away to Table Bluff and took the fog signal with it; but it is now away beyond the danger point, and a point where frequently the wind blows the sound offshore. I have been by there and knew the fog signal was blowing, but the wind carries it right away.

I would not press that \$5,500 item on Cape Mendocino. They have been living there for some time, and although it may be in a dilapidated condition, it might wait.

The CHAIRMAN. In your opinion, the fog signal at Humboldt Bay is absolutely necessary?

Mr. GILLET. Yes; I think everybody would say that. I cross it, and I know of the danger that is there. As to this light-house tender, so far as the necessity for that goes, you would have to depend upon those familiar with it.

The CHAIRMAN. Very well. We are very much obliged to you for coming in.

Mr. GILLET. I am very much obliged to you, Mr. Mann, for giving me the opportunity to come in. The one thing that I am most particularly interested in is that item for the fog-signal station. It is a matter which is necessary, I think, for the traveling public.

STATEMENT OF HON. THEOBOLD OTJEN, REPRESENTATIVE FROM WISCONSIN.

The CHAIRMAN. Mr. Otjen, what are your bills?

Mr. OTJEN. I have just one. The number is H. R. 115, for the establishment of a third-order flashlight and fog-signal station at the harbor of refuge, Milwaukee, Wis. At Milwaukee we have a harbor of refuge that incloses about 1,200 acres of water, and that breakwater is completed now, and for the last six years this station has been recommended by the local engineer and the board of engineers. They have recommended that there should be a light put on the south end of this breakwater of the harbor of refuge. Formerly they recommended that it should be a fourth-order light, and estimated that the cost would probably be \$75,000; but in the report of 1902 they make the recommendation that it should be a third-order light and that the light should be at least 105 feet high, and also that the light that is maintained at North Point, on the shore, could be abandoned.

The CHAIRMAN. We have been all over that recommendation with the Board. What information can you give us, of your own knowledge of affairs there, as to the necessity of this?

Mr. OTJEN. Well, it seems to me that it is a matter that is entirely necessary, because at that point they must necessarily maintain a light. It ought to be a light something of this character.

The CHAIRMAN. No light has been maintained there in the past?

Mr. OTJEN. Yes; but there is a small light that they keep there now.

The CHAIRMAN. Of course, there may be a light on the breakwater, but there is no light-house. There is simply a temporary beacon light there now?

Mr. OTJEN. Yes. Well, there should be a light-house there, sooner or later.

The CHAIRMAN. Of course, what we are trying to get at now—in view of our financial condition and the effort that is being made in the House to make no extravagant appropriations—is to ascertain what ones of these improvements that are recommended are absolutely necessary to be made at this time.

Mr. OTJEN. Well, as to the urgent necessity of it, of course, the views of the Board, here, ought to bear upon that question. Of course, all I know is that that breakwater is completed, and that there ought to be a light on it sooner or later.

The CHAIRMAN. How long has the breakwater been completed?

Mr. OTJEN. About three of four years. I should say four years.

The CHAIRMAN. I see by the river and harbor act of 1899 that funds were provided for the completion of the breakwater.

Mr. OTJEN. Yes; it was completed in 1900, or a little after.

The CHAIRMAN. They have been working for this light ever since?

Mr. OTJEN. Yes. This light would guide the boats to the harbor proper, and also as to the course with the shore.

The CHAIRMAN. Is this north or south of Milwaukee Harbor?

Mr. OTJEN. It is a little bit north, only a little farther into the lake.

The CHAIRMAN. Is it for the benefit of vessels coming from the north or of vessels coming from the south?

Mr. OTJEN. It would guide vessels both north and south. It would be a range light—I guess that is what they would call it.

The CHAIRMAN. No; it would not be a range light, because a range light consists of two lights.

Mr. OTJEN. This light would serve two purposes. One would be to guide those vessels and steamers to the harbor of Milwaukee, and the other purpose would be to show the shore line, so that they might know where they are. Up at the upper part of Milwaukee there is now maintained a light called the North Point Light. If this light-house is built, that one can be abandoned.

The CHAIRMAN. Do you think that will be abandoned?

Mr. OTJEN. Its usefulness is largely gone, for this reason, that the city is now lighted with electric lights, and this light on the shore is more or less confusing with the other lights.

The CHAIRMAN. Are you willing to state from your present information that if this new light and fog signal are provided as recommended, so far as you are concerned, or the other members of Congress from that locality are concerned, there will be no objection to the abandonment of the light on North Point?

Mr. OTJEN. So far as I am concerned, there will not be. My judgment would be that the North Point Light would be of no use

when this new light is built; and in fact it was recommended that that should be abandoned some time ago, even without this light-house being built. But of course the light-house keeper was interested in not having it abandoned.

The CHAIRMAN. Last year you introduced a bill for a light-house depot at Milwaukee, and you succeeded in getting that put into the sundry civil bill. Do you not think that Milwaukee was very fairly treated last year, without asking for a new light-house this year?

Mr. OTJEN. I am not complaining about last year at all. It is not the things we have that we are troubling about, but the things that we want.

The CHAIRMAN. You have not got the depot yet?

Mr. OTJEN. No, but they are taking steps to do it.

The CHAIRMAN. Very well; you have no other bill?

Mr. OTJEN. No, sir; no other bill.

The CHAIRMAN. I am very much obliged to you.

Mr. OTJEN. All right. It is an improvement that is bound to come anyhow in the course of time.

STATEMENT OF HON. EDWIN C. BURLEIGH, REPRESENTATIVE FROM MAINE.

The CHAIRMAN. We have pending before the subcommittee, Governor Burleigh, House bill No. 4860 and also House bill No. 5219, which were introduced by you, and I suppose that No. 5219 is intended to take the place of No. 4860. They provide for the establishment of a light-house and fog signal at Isle au Haut, Maine. We also have Senate bill No. 6929, to establish a light and fog signal at Robinsons Point, Isle au Haut Thoroughfare, Maine.

Mr. BURLEIGH. Who introduced that?

The CHAIRMAN. That came from the Senate.

Mr. BURLEIGH. Which Senator introduced it?

The CHAIRMAN. I do not know which Senator introduced it. It all relates to the same matter, I suppose.

Mr. BURLEIGH. The Light-House Board tells me that that is a correct bill.

The CHAIRMAN. You mean No. 5219?

Mr. BURLEIGH. Yes, sir. I suppose it would go to Robinsons Point.

The CHAIRMAN. Now, what is the necessity for this, not referring to the report of the Light-House Board, which we already have?

Mr. BURLEIGH. You have the Light-House Board's report; you have had Colonel Lockwood here before you, and you have all the facts.

The CHAIRMAN. Is there any reason why this provision should be made at this session of Congress, when we are all trying to cut the corners close? Do you know the amount of fishing that is done there?

Mr. BURLEIGH. No; I do not know anything more about it than the report of the Light-House Board shows, and the fact that those fishermen and others are pressing me very hard.

The CHAIRMAN. You have had communications from the fishermen on this subject?

Mr. BURLEIGH. Yes; I have had. I have had communications from the leading men. There is also a lady in New York, well acquainted with Mr. Grosvenor—

The CHAIRMAN. What would a lady in New York know about fishing up in Maine, any more than a similar tale of woe told here?

Mr. BURLEIGH. I do not know anything more about it than you do, Mr. Chairman, but I know this—I want to say this, although perhaps it will weaken my case: That during the eight years I have been in Congress I have never asked for unanimous consent but once, and that was on something that belonged outside of my district.

The CHAIRMAN. You will not get this by unanimous consent, so that that will not interfere with your record.

Mr. BURLEIGH. There are some on the Board who know the reasons why I have not taken these things up, and no man knows that better than the chairman of this committee.

The CHAIRMAN. If there is anything that has gotten away from Governor Burleigh for lack of diligence since he has been here, I do not know of it. Now, what is the necessity of this light-house?

Mr. BURLEIGH. I have talked with Colonel Lockwood this morning, and he told me what he said here before the committee.

The CHAIRMAN. Yes; you will not need to repeat that. Have you ever been there yourself?

Mr. BURLEIGH. Never.

The CHAIRMAN. What representations have been made to you by the fishermen there in reference to it?

Mr. BURLEIGH. It is a very dangerous coast. They need that light-house in order to get in after they are out fishing in that vicinity. There are great fishing grounds there, you know, and they have to come in very early on account of the dangerous places there to get into the harbor.

The CHAIRMAN. Have you any idea, Governor, as to the extent of the fishing there?

Mr. BURLEIGH. No; except it is represented to be a large interest.

The CHAIRMAN. Of course we can not afford to provide a light-house and fog signal for two fishermen up there.

Mr. BURLEIGH. Oh, no; that is not so. The Light-House Board knows better than that. They have recommended this in three reports, and I will say to you that I submitted it to the chairman of the committee a year ago, but it was too late. He looked it over and he said "I do not see why that should not be done. I will take that up." The distinct question came up whether I should meet it in the House, and it went over to this year.

The CHAIRMAN. Now, you have a good deal of what is known as "summer resorting" up in this locality, have you not? Is this light-house for the benefit of fishermen, or for the benefit of one or two private yachts, one of them owned by this lady up in New York?

Mr. BURLEIGH. No; she does not own any. She is a practical woman, and goes down among those fishermen. She is an elegant lady—

The CHAIRMAN. I have no doubt of it, she being a friend of yours.

Mr. BURLEIGH. And I want to say that there is actual fishing done there. I want to say this, that you have got about all that I know about it, and besides that—

The CHAIRMAN. I am looking for information.

Mr. BURKE. I understand that the fishing interests at that point are quite important and extensive—

The CHAIRMAN. And he gets that understanding from the lady in New York.

Mr. BURLEIGH. Oh, no, indeed. If I had known that what was said here was taken down, I would—

The CHAIRMAN. Oh, yes; it will all be printed.

Mr. BURLEIGH. If you report against it, it will all be in the report?

Mr. BURKE. I do not see how we can report against it, in view of your record, Governor.

Mr. BURLEIGH. I will endeavor to meet it in the House. It has been brought up by business men, and I regret very much that I have not been versed in the law, as you gentlemen are.

The CHAIRMAN. Will you not get us some kind of a statement at once as to the amount of fishing that is done there—as to the importance of the industry?

Mr. BURLEIGH. Yes; I will do anything you say. I do not know whether I could get it here.

The CHAIRMAN. If you can furnish us any information as to the importance of the industry there we would be very much obliged to you.

Mr. BURLEIGH. Very well; I will take it up immediately.

The CHAIRMAN. We are very much obliged to you, Governor.

Mr. BURLEIGH. I thank you. I am very much obliged to you.

There is one other matter that I would like to speak about, something that my friend Dent is interested in. He was Mr. Blaine's secretary, and for several years he was at Augusta. He helped Mr. Blaine about his Twenty Years in Congress, and he wrote and re-wrote it, and he is to appear before you here, and of course I want to say a good word for him.

The CHAIRMAN. We would not give him a light-house because he helped Mr. Blaine write his Twenty Years in Congress.

Mr. BURLEIGH. No; but I want to say I am in favor of it, and I want to speak a good word for him.

STATEMENT OF HON. WILLIAM G. BRANTLEY, REPRESENTATIVE FROM GEORGIA

Mr. BRANTLEY. Mr. Chairman, I got a note from you to meet you here this morning.

The CHAIRMAN. Yes. You have two bills pending before the committee—one, House bill No. 7635, for three lighted buoys on the outer bar at Brunswick, Ga., and the other, House bill No. 7636, for a light-ship off the outer bar at Brunswick.

Mr. BURKE. No. 7635 is the one Colonel Lockwood said could be provided for by the general appropriation, was it not?

The CHAIRMAN. I can not say; but we would be very glad to hear from Mr. Brantley as to what he knows about the necessity of this. He introduced the bill. Of course, we do not ask you to furnish the information that the Light-House Board has, because we get that from the Light-House Board itself.

Mr. BRANTLEY. My understanding was that at the last session of

this Congress your committee decided to turn down the lighted-buoys bill and did report favorably the light-ship bill.

The CHAIRMAN. Yes; but we are contemplating the possibility of making up an omnibus bill on all of these, and there are several things on the Calendar that could not be put in the omnibus bill.

Mr. BRANTLEY. The light-ship is of more importance, of course, than the buoys.

The CHAIRMAN. What can you tell us of the necessity of the light-ship?

Mr. BRANTLEY. It is this: If you have ever looked at the map of our coast, you will notice there is quite a bight there.

The CHAIRMAN. Here is a map [producing map], and here is Brunswick [indicating thereon].

Mr. BRANTLEY. Now, you see how that bight is made in the coast there—

The CHAIRMAN. Yes; extending almost from Wilmington to Jacksonville, Fla.

Mr. BRANTLEY. Yes. The mainland is very low. There are no hills or mountains, or anything like that, and these shoals project out here [indicating].

The CHAIRMAN. That is, they are shoals running out from the lowlands to the sea quite a distance?

Mr. BRANTLEY. Yes; and it is proposed by the Light-House people to put in this light-vessel, not simply for the benefit of Brunswick, but to put it here where it will be a guide not only to vessels coming into Brunswick, but those going into Florida ports, and those passing up and down the coast and not stopping at any place.

The CHAIRMAN. Do you know whether these vessels that sail back and forth from northern ports to the extreme southern ports of the Gulf of Mexico rather hug the shore?

Mr. BRANTLEY. They do, as I understand.

The CHAIRMAN. As a matter of precaution. And in their hugging the shore they are afraid of these shoals that run out in the sea there, especially around Brunswick?

Mr. BRANTLEY. That is what I understand.

The CHAIRMAN. So that this light is not only for the benefit of Brunswick, but for the benefit of passing vessels?

Mr. BRANTLEY. Yes; and it is also a benefit to those going into Brunswick. It would be a guide to them, and it would be a help to those vessels coming and going up and down the coast.

The CHAIRMAN. Do you know whether there have been accidents there?

Mr. BRANTLEY. Yes. I did have a list of them, Mr. Mann. It is a long list of wrecks that they have had. The agitation for this light-ship has been going on for a number of years. It was taken up at one time by the New York Marine Association, and they memorialized Congress; and when I first came here I had a petition from I do not know how many shipowners, praying for this ship to be put in. They used to tell me at the Light-House Board that there were two or three other vessels desired that they thought were of really more importance than this one. But last winter they made the statement to me that this was required, and they put it in a letter, as follows:

DEPARTMENT OF COMMERCE AND LABOR.
OFFICE OF THE SECRETARY.
Washington, February 16, 1904.

HON. W. G. BRANTLEY, M. C.,
House of Representatives.

SIR: Your letter of February 12, 1904, stating the condition of Senate bill No. 462, "to construct and place a light-ship off the outer bar of Brunswick, Ga.," and asking the opinion of the Department relative thereto, was referred to the Light-House Board for its opinion.

In reply, this Department has the honor to state that the Light-House Board, to whom the matter was referred, reports that in its opinion it is more important to the interests of commerce to establish a light-vessel off Brunswick, Ga., than it is to establish a light-vessel at any other place on our coasts which has not already been provided for by previous appropriations.

Respectfully.

GEO. B. CORTELYOU, *Secretary.*

They finally got me up to the top of the list. I have had to wait, as I say, until they attended to three others. I wish I had the data about those wrecks. It is quite a long list. We had one very serious wreck last year.

The CHAIRMAN. When was that, and what was it?

MR. BRANTLEY. I have forgotten the name of the vessel. It was a passenger vessel. Most of our vessels, you know, are the freight schooners.

The CHAIRMAN. What was the cause of it?

MR. BRANTLEY. Running into those shoals out there.

The CHAIRMAN. Do you know anything about this other matter, as to the necessity of the three lighted buoys?

MR. BRANTLEY. Well, if I got the light-ship, I would be willing to let the buoys go. Of course the buoys would be of great value to commerce—they might double the value of commerce, because the vessels could go there at night the same as in the daytime by means of these lighted buoys.

The CHAIRMAN. How much commerce have you there now?

MR. BRANTLEY. We have a commerce of \$30,000,000 a year. That is the total value of the commerce to the port. It was only about \$5,000,000 in 1893, and it has grown now to about \$30,000,000.

The CHAIRMAN. Do you mean that the value of the commerce by sea from Brunswick is \$30,000,000 a year?

MR. BRANTLEY. Yes. If you have one of those reports, you will find it there. As I understand it, that is the commerce going in and going out. That is the business of the port in vessels. It is shown in the report of the Chief of Engineers.

MR. SHACKLEFORD. What depth of water do you have there, Mr. Brantley?

MR. BRANTLEY. We have 26 feet at mean high tide on the bar. We have a very tortuous channel across the bar that we are now trying to straighten. The light-house people have recently made our range lights into the harbor a little better than they used to be. As I understand it, the lighted buoys, if we could get these put in, would enable the vessels to take advantage of the night tide as well as of the day tide.

The CHAIRMAN. As it is now the vessels are not able to sail at night?

MR. BRANTLEY. No; I think as a rule they do not. Take a vessel that comes in and loads. It waits for the day tide. The way our

water is we have about 19 feet of water at low water across our bar, and when the tide rises it is about 6 or 7 feet more, and when the tide is high they go out, and they usually take the day tide for the purpose of going out.

Mr. BURKE. I call attention, Mr. Brantley, to the fact that Colonel Lockwood said the other day to the subcommittee, in regard to the matter of lighted buoys, that they can be taken care of by the Light-House Board under the general appropriation if they consider them a necessity. Now, if you can convince them you can probably get what you want.

Mr. BRANTLEY. I would like very much to see them established. I think they would enhance the value of our port very much; but our people all think the vessel is of paramount importance.

The CHAIRMAN. We are very much obliged to you, Mr. Brantley.

Mr. BRANTLEY. I am certainly very much obliged to you. If you will pardon me a moment, I have here a paper—a resolution passed by the Board of Trade of Brunswick a year ago, January 26, 1904—that gives some little data. It says:

Whereas bills are pending in both the Senate and House of Representatives of the United States for the establishment of a light-ship in this curvature of the coast, the location for which has been selected about 15 miles easterly from Cumberland light; and

Whereas such light-ship is of vital importance to the shipping of all ports between Savannah and Cape Canaveral; and

Whereas, due to shoals projecting into the ocean, vessels have been ashore every year since the civil war, amounting in the aggregate to over 50 vessels, and within the last sixty days the three-masted schooner *J. H. Parker*, the British steamship *Palatina*, the four-masted schooner *J. Holmes Birdsall*, of over 1,000 tons, the schooner *Sarah C. Ropes*, and one unknown steamship have been ashore, all of which could have been saved by a light-ship; and

Whereas this light-ship is of vital importance to the coast commerce passing into and out of the Gulf of Mexico:

Resolved, That this board of trade earnestly renews its appeal for the passage of the light-ship bill, and, thanking Mr. Brantley, our Representative, and our Senators for their earnest efforts, ask that they will present these renewed reasons for immediate action; and further

Resolved, That a copy of these resolutions be sent to our Congressman from the Eleventh district and our Senators in the Congress of the United States.

BRUNSWICK, GA., January 28, 1904.

I hereby certify that the above is a true and correct copy of a resolution passed by the Brunswick Board of Trade this 28th day of January, 1904.

A. M. SMITH,
Secretary Brunswick Board of Trade.

There were five vessels lost in sixty days or two months.

The CHAIRMAN. Five in two months?

Mr. BRANTLEY. Yes. I am much obliged to you, gentlemen. I will be still more so if I can get in the omnibus. I like to ride in omnibuses.

The CHAIRMAN. It is not certain whether it will be an omnibus or a single phaeton.

STATEMENT OF MR. LOUIS A. DENT.

The CHAIRMAN. Now, Mr. Dent, you are interested in this bill for lighting Ambrose channel?

Mr. DENT. Yes.

The CHAIRMAN. We will hear what you have to say on it. It is not necessary to quote the Light-House Board. We have their reports on it.

Mr. DENT. I do not know that there is anything that I could say in addition to what I have said before, in view of the fact that I have since talked with Colonel Lockwood, of the Light-House Board, and learned from him of a report from General Mackenzie on this channel, and that substantially it is what I said.

The CHAIRMAN. You have made no statement to this committee.

Mr. DENT. My statement was briefly this, Mr. Mann: That the engineer officer in charge of the construction of that channel, which is to be the new channel of New York Harbor, estimated that within two years they will have completed a channel of a thousand feet in width, and 35 feet deep, open for navigation.

The CHAIRMAN. Where have you the statement to that effect?

Mr. DENT. The statement was made to me verbally by General Mackenzie, based upon a report to him by Colonel Marshall; and I understand by Colonel Lockwood that that statement has been made to him officially by General Mackenzie in response to a request.

The CHAIRMAN. I understand it quite to the contrary.

Mr. DENT. I can only state to you what I have been advised by the authorities. I understood from Colonel Lockwood that General Mackenzie in an official communication had reported that statement.

Mr. BURKE. I understood he made a statement that he had a channel 35 feet deep and 1,000 feet wide that would be completed in two years.

The CHAIRMAN. But not now, but for navigation?

Mr. BURKE. He says on page 11 of our hearings:

That will only be available for limited navigation, for the reason that they can not permit vessels to run in and out and interfere with the work of the dredges, and that at the end of five years, provided the dredges work satisfactorily, the Engineer Department expects to have the whole channel completed.

The CHAIRMAN. The statement to me was that it would be impracticable to permit the navigation of that channel until the Government is through with its work. There is no way to limit the navigation. You can not say one steamship may go through and another one shall not. But the statement made to me was that if the Government attempted to throw this channel open to navigation in two years' time it would interfere with the work so as to prevent its progress and completion.

Mr. DENT. I am only giving the statement made to me, that the channel would be open to limited navigation. That is to say, not to vessels of larger tonnage, but to smaller vessels that would not interfere with the dredges. That, as I understand it, is the statement of Colonel Marshall, in charge of the work in New York, to General Mackenzie. Certainly it was made to Colonel Schwab, of the steamship committee, in whose behalf I appear before you. I only got it in an unofficial way.

The CHAIRMAN. You wanted a hearing on this, Mr. Dent. Now we give you a chance to furnish the information, and you have not got it.

Mr. DENT. As the lawyers say, I am taken by surprise in this way—

The CHAIRMAN. In that we want information that you have not got?

Mr. DENT. Yes; I understand the statement for the first time. The statements of the Light-House Board and of the engineers are at variance. I asked Colonel Lockwood to procure this official report from General Mackenzie, which he said he had.

Mr. BURKE. Will you procure it, Mr. Dent?

Mr. DENT. I doubt if he would give it to me. I asked Colonel Lockwood to get it from General Mackenzie.

The CHAIRMAN. Whom do you represent, Mr. Dent?

Mr. DENT. The committee of the Trans-Atlantic Steamship Lines, of New York, headed by Mr. Schwab.

The CHAIRMAN. What steamship lines?

Mr. DENT. I can not give you the details of the combination.

The CHAIRMAN. You represent them simply as an attorney?

Mr. DENT. Yes; simply as an attorney, through Mr. Schwab.

The CHAIRMAN. And personally you are not very familiar with the situation, except as you have acquired it by research?

Mr. DENT. Personally I have no knowledge of it whatever, except as I have acquired it and as Mr. Schwab has acquired it. He has had personal interviews both with Colonel Marshall, in charge of the channel improvements, and with both of the light-house officers.

The CHAIRMAN. Do you know whether these trans-Atlantic steamship lines expect to use this Ambrose channel within two years' time?

Mr. DENT. I am so advised.

The CHAIRMAN. They do not consist of the smaller vessels that you speak of? They are the largest vessels that go out of New York, are they not?

Mr. DENT. That is true.

The CHAIRMAN. You will see that it makes quite a difference whether we ought to provide for a light-house now, if the channel is to be opened in two years, or in five years from now. It is very evident, if the trans-Atlantic steamship lines propose to use this channel, it will mean that it will be thrown open to everybody.

Mr. DENT. That is true. Our information is to that effect, and they will have the opportunity to use it.

The CHAIRMAN. My information is not official. We would be very glad if you could furnish any information on the subject at once for the files, to be printed. It is a very important matter to the Government, which has to make provision for lights on that channel, so that when it is open for navigation it may be used. The Government is constructing that channel at immense expense, but there is no object in providing for a light-house there two or three years before it can be used. Nobody now knows where it will be located.

Mr. BURKE. I suggest, Mr. Chairman, that you, as chairman of this subcommittee, call upon Colonel Lockwood for a copy of General Mackenzie's letter, referred to by Colonel Lockwood as having been received by the Light-House Board, on page 11 of our hearings.

Mr. DENT. How long do I understand it will take to provide this light-house?

The CHAIRMAN. Colonel Lockwood stated that it would take about two and one-half years.

Mr. DENT. That was my understanding. The light-house is to be built in the water.

The CHAIRMAN. As a matter of fact, it could be provided in much shorter time than that if necessary.

Mr. DENT. I was taking his statement as an expert. I understand this light-house has to be built in the water, and they have to make borings.

The CHAIRMAN. That is true. But they can not make borings now. They can not tell for some time yet where the light-house will be located. It has to be a range light. They do not know where it will come in.

Mr. DENT. I will be very glad to get information on that point, Mr. Chairman.

**STATEMENT OF HON. AUGUSTUS P. GARDNER, REPRESENTATIVE
FROM MASSACHUSETTS.**

The CHAIRMAN. Mr. Gardner, I believe you are next on my list. I believe your only bill is H. R. 13427, for the establishment of an automatic signal at Bakers Island, Salem Harbor, Massachusetts. Is not that the only bill? The word "automatic," of course, goes out.

Mr. GARDNER. Yes; there is no such thing. Call it a fog-signal.

The CHAIRMAN. Yes. Now, omitting any reference to the recommendation by the Light-House Board itself, which we already have, we would be very glad to have you give us the reasons for the immediate necessity for this provision, in view of the financial condition of the Government.

Mr. GARDNER. Well, it seems to be a dangerous spot, this Bakers Island. Bakers Island is a twin light, if I recollect rightly, a high and low light. I used to be very familiar with it.

Now, you know Salem Harbor is used very much as a harbor of refuge by the coastwise trade. It is the only harbor they can get into. They can not get into Gloucester because of the northeast storms, and they can not get into Portsmouth against the tide.

The CHAIRMAN. What do these vessels carry?

Mr. GARDNER. Lumber, principally, and paving stones a great deal. You see they carry from the granite quarries to Boston. I lived for fifteen years almost in sight of Bakers Island, and after a storm you would see a tremendous fleet going out from there.

The CHAIRMAN. Are these large vessels or nearly all small vessels?

Mr. GARDNER. They are vessels, I should say, of which the maximum length might be 150 feet on the line. Once in a while we get a lot of these old types of schooners and hermaphrodite brigs in there. The most of them are two or three or four-masted schooners.

The CHAIRMAN. Are there fogs in there?

Mr. GARDNER. Yes; that is a great place for fogs. I can not tell you now as to the relative merits of the different kinds of signals. I know the lights are not, for some reason or other, considered as signals.

The CHAIRMAN. The fog signal is used only when you can not see the lights?

Mr. GARDNER. Yes. When I was a boy, of course, they did not have these modern appliances. Whistling buoys came in after I was 15, I should say, after I left that part of the country.

The CHAIRMAN. Does any one live near this place? I ask that because I want to call your attention to the fact that a fog-signal whistle is the most abominable noise that was ever made in the world. It would drive a man crazy.

Mr. GARDNER. You will not have any trouble from that. Salem Harbor runs out like that [indicating], including Beverly Harbor there, and Marblehead there [indicating on the map]. Bakers Island and Misery Island are the two gateways of Salem Harbor. There is Great and Little Misery [indicating].

The CHAIRMAN. Bakers Island must be out several miles from the shore— 2 or 3 miles anyhow?

Mr. GARDNER. No; not several miles. The West beach is about three-quarters of a mile from the Miseries, and that is about a mile and a half.

The CHAIRMAN. It is about 2 miles?

Mr. GARDNER. I guess.

The CHAIRMAN. It is a little less than a mile north of Bakers Island?

Mr. GARDNER. That is half a mile from Great Misery to the West beach. That is a long, long bathing beach there, and it must be a mile from Misery to Bakers Island.

The CHAIRMAN. Do the vessels passing along the shore here hug the shore?

Mr. GARDNER. No; they make for Thatchers Island light, as you will see. It is a twin light.

The CHAIRMAN. What is the occasion for vessels going down to Bakers Island?

Mr. GARDNER. It is used very largely as a harbor of refuge.

The CHAIRMAN. In case of storms these vessels out here run into Salem?

Mr. GARDNER. Yes. You see, in order to get into Gloucester, they have to go in against the northeast wind, and the next place they strike is Portsmouth, where there is a tremendously strong tide.

The CHAIRMAN. We maintain twin lights now on Bakers Island?

Mr. GARDNER. You have not twin lights in the ordinary sense of twins. The Bakers Island lights now are a short and a high light. They are old-fashioned lights. Of course, you understand that shore is covered with lights. The Miseries have lights, and the course runs on either side of Bakers Island; but the heavy-draft vessels, I think, go to the southeast.

The CHAIRMAN. Is there any more reason for a fog signal on Bakers Island than at another place?

Mr. GARDNER. Experience shows that that is where they have the wrecks. Since they put in that petition three years ago they have had three wrecks. One of the vessels, costing \$175,000, was wrecked near the present fog bell, and two others, costing \$20,000 each, stranded on the reef near the island. They are shown on the nebulae around the islands. That is since 1902.

The CHAIRMAN. Do your shipping people up there believe that if this fog signal was there these vessels might have escaped being wrecked?

Mr. GARDNER. That is what the harbormaster of Salem says. Of course, you will understand that this is more or less an altruistic performance on the part of Salem's pilot. It is the pride of having things right where you live. It is not so much the local Salem shipping. There is comparatively little to call anything in there, and lumber is the greater part of it. The collector of Salem port has not much to do. But the harbormaster has a pile to do. On any morn-

ing after two or three days of storm Salem harbor is perfectly covered with vessels. It is one of the prettiest sights you ever saw—three-masted, sometimes four-masted, and ordinary two-masted vessels.

The CHAIRMAN. What do these vessels carry?

Mr. GARDNER. Lumber, chiefly.

The CHAIRMAN. Lumber from Maine?

Mr. GARDNER. Lumber from the provinces, but more especially from Maine.

The CHAIRMAN. Are any of them fishing smacks?

Mr. GARDNER. Marblehead used to have a great many fishing vessels, but, you see, fishermen would naturally not be in that course. They leave Gloucester, and they go one of two ways—they set a course southeast by east, or else take a northeast course to the Grand Banks. They naturally would not use it for protection. Of course there are those stone sloops, carrying stone from Rockport to Boston.

The CHAIRMAN. We are very much obliged to you, Mr. Gardner.

Mr. GARDNER. I had no idea that this was so important as the harbor-master of Salem seems to think it is. But, of course, it is his job to look after the coastwise men who come in there for protection; and, as I say, there have been three wrecks since 1902, and that to my mind ought to make it a pressing matter, provided you did not have others more pressing still. You see what I mean.

The CHAIRMAN. Of course, the incident of being wrecked is part of the business of a sailor, just as it is of a railroad man.

Mr. GARDNER. Yes; but that is a pretty big number of wrecks in two years. We have had 27 wrecks on the Government improvement in Gloucester Harbor. They are building a sea wall there, and we have had 27 wrecks there while it has been in process of construction. Of course, you see, no fisherman would think of sailing with a chart less than ten years old, and they will hang up on that breakwater, and in that way many wrecks have ensued. You understand, on the coast, when you get to the south and west of the head of Massachusetts Bay, which is Cape Ann, you are in comparatively safe water. But north of that you are going to have trouble. The fog bell that is there at present was put up in 1855, and it is inadequate.

The CHAIRMAN. Yes; and its hoary antiquity ought to prevent us from doing any injury to it.

Mr. GARDNER. Yes; you can still keep it there as an antiquity. Nobody objects to keeping it there. People do not live in Hawthorne's house any more, but they keep it just the same. So long as you do not require the poor mariner to be warned by that signal alone, it will be all right. I say, that is about as reasonable a case as you would get. I do not maintain, of course, that it is of the same urgency as would be a question of putting lights where there are none. Our whole New England coast, you know, is covered with lights and with buoys.

STATEMENTS OF HON. JONAH K. KALANIANA'OLE, DELEGATE FROM HAWAII, AND HIS SECRETARY, MR. GEORGE B. McCLELLAN.

Mr. KALANIANA'OLE. With your permission, Mr. Chairman, I will designate Mr. McClellan, who is my secretary, to speak for me. He also represents the business interests of Honolulu. He will make a

statement. He has gone into the matter very carefully with the Light-House Board.

The CHAIRMAN. Very well.

Mr. McCLELLAN. Mr. Chairman, here is a chart [submitting same] that will illustrate the points.

The CHAIRMAN. Which bill do you speak to first?

Mr. McCLELLAN. I would like to speak to the bill H. R. No. 17706, to build a new light-house and range light at Honolulu Harbor. Here is a map [producing same] which will give you a general idea. Here is San Francisco, here to the northeast, and here is Honolulu Harbor. These vessels swing down around to Diamond Head.

The CHAIRMAN. Honolulu lies on the south side of the island?

Mr. McCLELLAN. Yes. Here is a hydrographic map of Honolulu Harbor [exhibiting same]. It is necessary in order to see that our harbor here is landlocked, with a very narrow channel, going into very solid banks of coral. This channel has a working width now of only 200 feet, so that a large vessel has to be handled with extreme care to get her in. A vessel, with her cargo, may amount to \$4,000,000.

The CHAIRMAN. These vessels must be taken in by pilots?

Mr. McCLELLAN. Yes; they must be taken in by pilots.

The CHAIRMAN. Which way do you go in?

Mr. McCLELLAN. About northeast, there [indicating]. This is the range light [indicating], north 28.30 minutes east.

The CHAIRMAN. A little east of north?

Mr. McCLELLAN. Yes.

Mr. BURKE. What is this channel—the mouth of a river?

Mr. McCLELLAN. Yes; it is the mouth of a stream, Mr. Burke. Here [indicating] is the stream that has made this basin and harbor. The coral plant or animal does not grow in fresh water, and it is the coming down of this mountain river here which forms that basin.

Mr. BURKE. What is the distance from the mouth, approximately?

Mr. McCLELLAN. Approximately three-quarters of a mile.

Mr. BURKE. It is within a mile?

Mr. McCLELLAN. Yes; within a mile. I say approximately; three-quarters of a mile. The present old light-house is there [indicating], as you will see on the hydrographic chart. That is a wooden structure, set up on piles, and they have so far decayed that it is on the point of collapsing and tumbling into the water.

Mr. BURKE. How long has it been there?

Mr. McCLELLAN. I should say about thirty-five years.

The CHAIRMAN. The present light-house is on the point that juts out in the harbor, and the War Department proposes to cut that off?

Mr. McCLELLAN. Yes.

The CHAIRMAN. Why does the War Department take off this amount of land all along the harbor there?

Mr. McCLELLAN. Because it is very much needed for our shipping. Our harbor is only 800 feet wide, and you handle vessels several hundred feet long.

Mr. BURKE. How much do they propose widening it there, as shown by the lines?

Mr. McCLELLAN. I should say, roughly, 300 feet, Mr. Burke.

The CHAIRMAN. What is this improvement carried by—the river and harbor bill?

Mr. McCLELLAN. Yes; the river and harbor bill. The present appropriation does not provide for this point, but it does provide for that point. That is an urgent matter, so that vessels can go in there without that ugly turn.

Mr. BURKE. The depth of water is from 30 to 35 feet, is it not? Here it is marked $4\frac{1}{2}$ fathoms and $5\frac{1}{2}$ fathoms. That is from 30 to 35 feet?

Mr. McCLELLAN. The latest map shows the depth runs from 25 to 28 feet.

Mr. BURKE. Where is it proposed to put the new light?

Mr. McCLELLAN. The proposition is rather simple. It seems to be the logical thing to simply bring it in range and establish it right here [indicating].

The CHAIRMAN. There is to be a range light as well. Where is the other light to be?

Mr. McCLELLAN. Simply there, by the custom-house [indicating].

The CHAIRMAN. I do not see how this could be a range light, with that light back there.

Mr. McCLELLAN. This line is in range.

The CHAIRMAN. With a light of that sort, I should think they would have difficulty in distinguishing it.

Mr. McCLELLAN. That is one of the urgent things; those lights are so low that the pilots and masters of vessels took that matter up and passed a resolution urging particularly that the new light should be established, because of the entire insufficiency of those lights from the fact that they are so low.

The CHAIRMAN. Is a vessel permitted to come into that harbor at all without a local pilot?

Mr. McCLELLAN. They are permitted to leave without a local pilot, but as to entering I do not know, as a matter of practice; but I do not think they do.

Mr. BURKE. This project is provided for in the present river and harbor bill?

Mr. McCLELLAN. Yes, sir.

Mr. BURKE. And that would do away with this light?

Mr. McCLELLAN. Yes; absolutely.

Mr. BURKE. Some provision would have to be made?

Mr. McCLELLAN. Yes.

Now, I would like to call your attention to the volume of shipping we have in this port. Our tonnage of shipping last year in the port of Honolulu amounted to 3,760,000 tons.

The CHAIRMAN. You mean entrances and clearances?

Mr. McCLELLAN. That amount of tonnage entered.

The CHAIRMAN. Which is it—that amount of tonnage entered, or that amount of tonnage entered and cleared combined?

Mr. McCLELLAN. Both combined; a vessels enters and clears. Her tonnage is so much.

The CHAIRMAN. No: a vessel enters and they make out a statement showing the amount of tonnage entering, and another statement showing the amount of tonnage clearing; and, as a rule, they bunch it together in that way and count it twice.

Mr. McCLELLAN. That is not the case here.

The distance is about three-quarters of a mile, Mr. Mann, from the light-house to the offing. That is the light-house that at present bars the point [producing photograph].

The CHAIRMAN. You could not possibly make a high light-house there and make it a range light with the custom-house? You do not mean it to be a high light, as you might mean if you spoke as a light-house man?

Mr. McCLELLAN. We do not want it 400 feet, but I should say 50 feet at least.

The CHAIRMAN. They would build such a light as would be needed, of course, but it would not be a high light. There is no occasion there for a high light. It is not for the purpose of giving indication to mariners away outside?

Mr. McCLELLAN. No; but as I understand the problem from the pilots, Mr. Chairman, it is this: The light being in range with the street lights of Honolulu, they have great difficulty in distinguishing them, unless this new light were made sufficiently high to enable them to distinguish it from the street lights. My understanding of their view of the matter is that it will have to be made higher on that account. Of course we do not care to make any point on that. It is a question for the engineers to decide on that point. All that we ask is something adequate, according to the views of the engineering board.

The CHAIRMAN. The reason I spoke of it is because the bill carries an appropriation of only \$40,000, which is, of course, not sufficient to build a very high light.

Mr. McCLELLAN. That estimate, I might say, was taken by the Delegate from the suggestion of your local engineer. We did not attempt to go into the question of what the light-house would cost. We are perfectly willing to take Lieutenant Satterlee's judgment. All the trans-Pacific lines go there.

The CHAIRMAN. How much of an increase of shipping has there been since Hawaii was annexed to the United States?

Mr. McCLELLAN. I can not give you the exact figures, but I should say, roughly, an increase of 40 per cent.

The CHAIRMAN. Did they have the same difficulty with this light before annexation that they have now?

Mr. McCLELLAN. They have always had difficulty; yes, sir.

The CHAIRMAN. At that time they collected their own import duties, and they now complain that the General Government collects them and puts them into the general Treasury?

Mr. McCLELLAN. That is the fact.

The CHAIRMAN. And yet when they collected their own import duties they did not make provision for this light?

Mr. McCLELLAN. The two main reasons why this matter needs attention now and did not need it then is that the old light was not in as bad a state of decay then as now; and although the local government was spending considerable sums for dredging the harbor, they had not reached the point of removing this point [indicating].

The CHAIRMAN. Which they did not do when they collected their own import duties, but which we are now asked to do from the general Treasury.

Mr. McCLELLAN. A man in starting out to execute a business project commences at one end first. The local government has expended large sums of money deepening this harbor.

The CHAIRMAN. How much did they expend?

Mr. McCLELLAN. Upward of \$200,000.

The CHAIRMAN. The local government?

Mr. McCLELLAN. Yes; the Federal Government has not expended one dollar yet.

The CHAIRMAN. How much have we appropriated for it?

Mr. McCLELLAN. The item is \$400,000 in the bill this year.

The CHAIRMAN. How much did we appropriate for this year?

Mr. McCLELLAN. None whatever.

The CHAIRMAN. Who proposes to cut off this point?

Mr. McCLELLAN. I do not quite understand your question.

The CHAIRMAN. You say the point where the light-house is to be located is to be removed by the War Department?

Mr. McCLELLAN. It is in the present bill pending before the House.

The CHAIRMAN. So that if the river and harbor bill does not pass there will be no necessity, so far as the removal of the light-house is concerned, for this appropriation?

Mr. McCLELLAN. No, sir.

The CHAIRMAN. I understood all the time that the appropriation had been made.

Mr. McCLELLAN. No, sir; the project has been laid out, but that is all. I would not want to mislead you. The people of the Territory are spending, in addition, \$350,000 in the construction of large Government slips and docks—

The CHAIRMAN. Which I suppose they will rent?

Mr. McCLELLAN. Yes, which they will rent, and which will not pay them any great income, but will provide for the facilities of shipping that come there. You see it is absolutely essential that we retain these steamers. We are on the point of losing these steamers because they can not enter the harbor.

The CHAIRMAN. What steamers are those?

Mr. McCLELLAN. The *Mongolia* and the *Manchuria*. Recently the *Manchuria* came there with a depth of 32 feet, and had to lie out in the open ocean and lighter her passengers with tugs.

The CHAIRMAN. Where do they go now?

Mr. McCLELLAN. From San Francisco to Hongkong and Shanghai.

The CHAIRMAN. And it is a question of whether they will go by way of the Hawaiian Islands or the great circle?

Mr. McCLELLAN. Yes, sir.

The CHAIRMAN. They do shipping now by way of the Hawaiian Islands, and would not do any by way of the great circle?

Mr. McCLELLAN. Yes; it is very important to us because we have no other alternative in the way of railroad trunk lines to take the place of them. It is a matter of great importance to us.

The CHAIRMAN. What line is that?

Mr. McCLELLAN. The Pacific Mail. It is also very important to us to have as many mail steamers as possible, and it would be a very serious loss to us to lose those steamers.

The CHAIRMAN. Now, you have another bill pending here, House bill No. 17707, for a light-house at Makapuu Point, on the island of Oahu, Territory of Hawaii. That is on the same point of land, is it not?

Mr. McCLELLAN. Yes. That is on the same point, Mr. Mann.

So far as this matter is concerned, it is a thing that interests the shipping people more than it does us.

The CHAIRMAN. Makapuu Point is the extreme eastern end of the island, I judge from the map?

Mr. McCLELLAN. Yes; all the trans-Pacific shipping follows this course from San Francisco, and also from Vancouver and Victoria, and the Australian steamers coming down here [indicating].

The CHAIRMAN. The Light-House Board makes this statement, which I would like to ask you about: That all the shipping from the Pacific coast of the United States, Mexico, and Central America, including Panama, passes Makapuu Head, and that there is not a single light on the whole northern coast of the Hawaiian Islands to guide ships and warn them of their approach to land after a voyage of several thousand miles. There are a number of lights east of that?

Mr. McCLELLAN. Yes.

The CHAIRMAN. Are there any light-houses on this?

Mr. McCLELLAN. No, sir; not on the eastern side, which in their island traffic follows this side exclusively.

The CHAIRMAN. Would it not be advisable to put light-houses on this side, where vessels first sight land, instead of over here [indicating], after they have passed by several islands?

Mr. McCLELLAN. No, sir; because the tonnage comes almost exclusively along this course from San Francisco and Puget Sound. The first light they sight is Makapuu Point, and not here [indicating]. If they should be driven out of their course they might drive down there [indicating].

The CHAIRMAN. Vessels coming from Panama would not come that way?

Mr. McCLELLAN. No. Fifteen years from now vessels coming from there [indicating] would come up along here—just about such a course as this [indicating]. When that time comes, Mr. Chairman, there certainly should be light-houses on the eastern end of the island of Molokai and the island of Maui. The last time I went down on the *Korea* we came up before daylight, and Captain Sebree was up in his pajamas and looking out, and he said, "McClellan, why don't people do something to get a light on Makapuu Point?" And then he went on to tell the reasons why they run in during daylight.

The CHAIRMAN. I would like to ask you about the spelling of Makapuu Point. I see it is "Makapuu," with two u's.

Mr. McCLELLAN. Yes; "Makapuu."

Mr. BURKE. Which of these two projects, Mr. McClellan, do you consider the most important?

Mr. McCLELLAN. Mr. Burke, I think, on account of the changes which we are very hopeful will be made in Honolulu, that one will be the more important, because if this appropriation goes through, and we have much encouragement to think it will, it will be extremely important to have provision made there. Furthermore, as you can see by a glance at this chart, that channel is so narrow and the handling of these vessels is such a precarious matter that it is important that we have the best light possible in the harbor. Here [indicating] they have a wide channel to swing around, and by using care in approaching and slackening up speed, as they do now, they can get in there by daylight.

Mr. BURKE. I was going to ask you whether or not there have been any wrecks, and, if so, to what extent by reason of there being no light on the Makapuu Point or on any other of the islands on the northern side?

Mr. McCLELLAN. I think, Mr. Burke, so far as I know—and the Delegate can correct me if I am wrong—there have never been disasters yet for the lack of a light on Makapuu Point, for the reason that I have suggested—for the reason that the steamers delay their speed on the last night, so as not to get through until daylight. There have been wrecks on this side [indicating], on the reefs there.

The CHAIRMAN. I suppose, as a matter of fact, that most of the steamers running from Puget Sound and San Francisco run in fairly even weather, and can almost absolutely tell when they will arrive there?

Mr. McCLELLAN. Yes. A good liner times itself very carefully to get in at about a certain time. They are not able to always, however. For instance, my wife wrote me in the last mail that a steamer due there in the morning did not get through until nearly 4 o'clock in the afternoon.

The CHAIRMAN. They know almost as nearly where they are as the railroad trains do, with land on each side?

Mr. McCLELLAN. Yes.

The CHAIRMAN. You do not have many tramp steamers?

Mr. McCLELLAN. Yes; we have some. The *Algoa*, for example, is a very fine tramp steamer.

The CHAIRMAN. Have you a statement of the import receipts there and the Government expenditures, etc., that you use for the purpose of showing why these expenditures should be made out of the general Treasury?

Mr. McCLELLAN. Yes; I can give you those figures. The approximation of the average customs receipts for the last four years has been between \$1,200,000 and \$1,250,000. The internal-revenue receipts have averaged about \$45,000 a year, which is just about the amount which is appropriated in the sundry civil bill for Federal salaries in Hawaii.

The CHAIRMAN. Do you mean by that that the Government collects \$1,200,000 more than it pays out, except as it may make public improvements?

Mr. McCLELLAN. Approximately. But they have not made any public improvements.

The CHAIRMAN. Of course that does not take into consideration the question of national defense?

Mr. McCLELLAN. No. There is a small post of 200 or 300 soldiers there. It does not count their salaries, or anything of that kind.

The CHAIRMAN. Your position is that if you were not annexed to the United States, and were collecting your own import duties at the same rates and on the same quantity of articles, you would be \$1,200,000 ahead of the game?

Mr. McCLELLAN. Precisely. We would be abundantly able to build our own light-houses, and very good ones.

The CHAIRMAN. Although, as a matter of fact, when you were in that position you did not build the light-houses? You understand the same claim could be made by any State. My State would be ahead of the game, on that basis, by about \$50,000,000 a year.

Mr. McCLELLAN. Yes, Mr. Mann; but there is this difference that I would call your attention to: You understand what your collection of funds is for. But for our collections every dollar is for goods consumed within our own borders. In other words, that million dollars

is shipped out in coin in bulk from Honolulu to San Francisco. It is a drain out of our resources. In Chicago you are paying for these imports and selling to San Francisco at a handsome profit, and it is an increment to you instead of a drain. That is the difference; and with all that, the shipping of Honolulu amounts to 60 per cent of the tonnage in the harbor of Chicago last year, not including Calumet Harbor.

The CHAIRMAN. You say the shipping in Honolulu amounted to 60 per cent of the shipping at Chicago? That shows you use an erroneous basis. No proper comparison can ever be made with Chicago according to the usual method of simply arriving at the tonnage of vessels. You count the tonnage that goes by the way of Honolulu—that stops to look at Honolulu, and does not unload. If it is a vessel of 8,000 tons burden, you count that 8,000 tons, although it may not put in a pound of freight.

Mr. McCLELLAN. I say the tonnage of shipping entering our port subject to marine risks; from that standpoint only. Of course, our volume of commerce is a small flyspeck compared with yours.

The CHAIRMAN. We constantly use that method of computation, and by it I have demonstrated on many an occasion that the commerce of Chicago exceeded the foreign commerce of New York; but it is a misleading showing.

Thereupon, at 12 o'clock noon, the committee adjourned to meet to-morrow at 10 o'clock a. m., February 16, 1905.

ADDITION TO STATEMENT OF GEORGE B. McCLELLAN, OF HONOLULU, HAWAII.

United States customs receipts from the port of Honolulu for the fiscal terms ending June 30 of the following years:

1901	\$1, 219, 338. 79
1902	1, 327, 798. 37
1903	1, 193, 677. 83
1904	1, 229, 467. 61
Total	4, 970, 282. 60
Annual average	1, 242, 570. 65

United States internal-revenue receipts from the district of Hawaii for the fiscal terms ending June 30 of the following years:

1901	\$102, 182. 63
1902	70, 235. 22
1903	40, 090. 52
1904	44, 632. 82
Total	257, 141. 19
Annual average	64, 285. 29
Average total annual receipts	1, 906, 855. 94

Annual appropriations for Federal salaries in the Territory of Hawaii for the fiscal terms ending June 30 of the following years:

1901	None.
1902	\$44, 500. 00
1903	44, 500. 00
1904	47, 500. 00
Total	136, 500. 00
Annual average	34, 125. 00

SUMMARY.

Average annual receipts.....	\$1, 306, 855. 94
Deduct annual appropriations.....	34, 125. 00
Annual net revenue to the Federal Treasury.....	1, 272, 730. 94

THURSDAY, *February 16, 1905.*

The subcommittee this day met at 10 o'clock a. m., Hon. James R. Mann in the chair.

**STATEMENT OF HON. FRANK B. BRANDEGEE, REPRESENTATIVE
FROM CONNECTICUT.**

The CHAIRMAN. Now, Mr. Brandegee, we will hear you.

Mr. BRANDEGEE. Mr. Chairman and gentlemen, I want to say a word in favor of Senate bill No. 6003.

The CHAIRMAN. There was a Senate bill and also a House bill?

Mr. BRANDEGEE. Yes; and in favor of the House bill No. 15992. Those two bills are duplicates. They are the same, verbatim.

Mr. BURKE. What do they propose to do?

Mr. BRANDEGEE. It is proposed to provide for the construction of a light-house and buoy tender for the inspector of the third light-house district, which consists of a portion of Connecticut and a portion of Rhode Island. The present light-house tender, a boat called the *Cactus*, was built in 1863—forty-two years ago. She is an old side-wheeler. She was built for the Navy Department in the middle of the civil war, and afterwards was transferred to the Light-House Board.

The CHAIRMAN. I might say, Mr. Brandegee, to help you out, that we already have in print all the information that is contained in the report from the Senate and in the Light-House Board's annual report.

Mr. BRANDEGEE. Therefore I will not allude to that any further.

The CHAIRMAN. Yes; we have been over that already. But we would be glad to have any new information from you in reference to it.

Mr. BRANDEGEE. I will simply say this, that this old *Cactus* has her headquarters in my own home city of New London. I have personally known her all my life, and last year the captain of the boat came to me and told me that she was utterly unfit for the duties she had to perform; that he was afraid to go out in her in heavy weather, and that her crew were all afraid, and that during a considerable time when her services were most needed—when light-ships and buoys had drifted out of their positions—they had to lie by inactive. She has to be pulled out from time to time to be repaired, and in the meantime there is no boat to perform her duties.

Mr. Hepburn asked me why they needed \$135,000 for this purpose, and said that when he first came on the committee they used to build tenders for \$50,000. Colonel Lockwood said that those were old wooden ships, small, and side-wheelers. A boat of this class now has to be 150 feet long, steel hull, and equipped with a propeller, and such

a boat would be much finer and in all respects a boat fit for modern service. He said they had built two of similar pattern last year of lighter draft for use in southern waters and rivers that were shallower, I think, for a slightly smaller sum; but this, he said, was the standard type which they were building for all deep-water service, which this district includes.

Colonel Hepburn also asked me to give him some information as to the necessity of these marine architects or draftsmen provided for in the bill, and he said he thought that was unusual in such bills. I asked the Board about that, and they said that provision had been in every bill with which they are familiar for building a light-house tender; and Senator Platt, who drafted the bill, in consultation with the Senate Committee on Commerce, said that he had looked up the acts, and it was in every act that he found within the last few years. I asked Colonel Lockwood why it was necessary, and he said that the Light-House Board, having been transferred to the Department of Commerce and Labor, had now no skilled draftsmen there and nobody to do the work outside of their own limited office force, which was entirely insufficient for the work which they now have to do.

Mr. Hepburn also asked me to get an estimate of what these draftsmen would cost, and Colonel Lockwood said it would not exceed \$3,000. Colonel Hepburn thought perhaps they might have utilized some of the architects in the Treasury Department, but these men said they had to have special marine architects, and now the Light-House Board has no authority to use the architects in the Treasury Department at all.

The CHAIRMAN. As a matter of fact, if I understand correctly, it has been usual to put such a provision in, although the Light-House Board will have a man employed through the Civil Service Commission for this class of construction work, or architectural work, but they desire to pay the expenses out of each appropriation. I think there is probably no sufficient annual appropriation to cover that, and the amount of service they may need depends upon the number of vessels they are proposing to construct.

Mr. BRANDEGEE. I do not know about that.

The CHAIRMAN. Of course, you would not know why it would cost more, if it does cost more, to construct a vessel like this on the Atlantic coast than on the Pacific coast?

Mr. BRANDEGEE. No; I would not know, and I should not think it would. I should think it would be just the reverse.

The CHAIRMAN. Still we have a bill here for a steam tender on the Pacific coast, proposing to appropriate \$130,000.

Mr. BRANDEGEE. What is this—\$135,000?

The CHAIRMAN. Yes.

Mr. BRANDEGEE. I suppose it would depend upon the proposed plans and the size of the vessel and the depth and the draft.

The CHAIRMAN. It would naturally require a larger vessel on the Pacific coast than upon the Atlantic coast, although I apprehend they are of the same size. And in the fourth light-house district also there is a bill pending for a tender to cost \$130,000.

Mr. BRANDEGEE. I could not give you any information about that.

Mr. BURKE. This bill has never been introduced until the present Congress?

Mr. BRANDEGEE. No; but it has been recommended by the Light-House Board right along.

The CHAIRMAN. The Light-House Board make a recommendation on pages 74 and 76.

Mr. BURKE. On page 36 of our hearings. That has the report of the Light-House Board in it.

The CHAIRMAN. Yes; and the Light-House Board report on that is given on pages 13 and 19 of their annual report.

Mr. BRANDEGEE. Yes; an extract from that, of course, is embodied in the report of the Senate committee.

The CHAIRMAN. Yes; and we have a special report. There are now 16 districts, I believe, and they wish to increase that number to 18, and they seem to want a new light-house tender at almost every place. I do not know whether it is because the old tenders have all worn out at the same time, or whether there is a demand on the part of those who navigate these tenders calling for more modern improvements.

Mr. BRANDEGEE. I do not want to ask the committee for one cent for luxury for any officer or crew or anything of that kind. If there are any other boats in the service that are older than this one, then I should say give it to them first. But this old wooden boat, built forty years ago, while she may still continue to navigate in good weather, is unfit for ordinary heavy weather and unseaworthy. Of course something will happen there some time if this old vessel is not replaced.

The CHAIRMAN. Of course, Mr. Brandegee, as a matter of fact, none of these light-house tenders go out in very bad weather. There is no occasion for it, unless it would be in prolonged heavy weather.

Mr. ADAMSON. They are only used to communicate with the light-houses, are they not?

Mr. BRANDEGEE. What is the testimony as to this point, as to age, and unseaworthiness, and so on?

The CHAIRMAN. The reports all say the same thing.

Mr. ADAMSON. How many demands are there in all? Eighteen?

The CHAIRMAN. No; we have not 18 demands, all told, but in some cases where light-house tenders were provided last year they want additional tenders this year. In all the districts they need a light-house tender for the inspector. In some they need one for the engineer.

Mr. BRANDEGEE. As I say, all I know about is this one light-house tender, and I do not know its comparative merits or demerits as contrasted with those of other bills. If there is anything I can furnish to the committee of course I will be glad to do it. Otherwise there is nothing for me to do but to leave the matter with you, which I do cheerfully.

The CHAIRMAN. If I had my own way about it, and I think if this committee had its own way about it, it would spend more money for aids to navigation that are needed and less money for battle ships, the need of which is a very doubtful question, in my mind.

Mr. ADAMSON. If there are as many as 16 or 18 they would cost altogether less than one-half of what a battle ship would cost.

The CHAIRMAN. The district of coast which Mr. Brandegee represents seems to be just as zealous for more battle ships as it is for additional aids to navigation.

Mr. BRANDEGEE. I think the coast which you represent, Mr. Chairman, is the same way.

The CHAIRMAN. No, our coast is not so eager; and the chairman of the Naval Committee, from our coast, has been doing his best to keep things down in that line.

Mr. BRANDEGEE. We have given them one-third of what they wanted.

Mr. ADAMSON. I have no objection to as strong a navy as is necessary, but I think it ought to come by degrees.

Mr. BRANDEGEE. I do not think two additional battle ships are excessive.

The CHAIRMAN. We are very much obliged to you, Mr. Brandegee.

Mr. BRANDEGEE. Not half so much, Mr. Chairman, as I am to you, gentlemen.

STATEMENT OF HON. WILLIAM S. GREENE, REPRESENTATIVE FROM MASSACHUSETTS.

The CHAIRMAN. Mr. Greene, we have here House bill No. 14832, introduced by you.

Mr. GREENE. Yes.

The CHAIRMAN. And also Senate act No. 5418. Each is to authorize a light-ship for the eastern edge of Hedgefence Shoal, at the entrance of Vineyard Sound, Massachusetts, at a cost not to exceed \$100,000. I may say we have had hearings in which the Light-House Board has been represented and we have also the annual report of the Light-House Board, and the report of the Senate, and the special report of the Light-House Board on your bill.

Mr. GREENE. Yes, sir.

The CHAIRMAN. And the subcommittee will be very glad to have any additional information that can be given by you in reference to the pressing necessity of this.

Mr. GREENE. I will tell you what that is. That is located in Vineyard Sound, where more vessels pass than any other point almost in the United States. There are 50,000 vessels that go through that harbor every year. It is a very dangerous point, and the new light-vessel is very much needed there. I have talked with the Light-House Board about it and they feel that it is very much needed.

The CHAIRMAN. Is this the Sound route between New York and Boston?

Mr. GREENE. No, sir. It is the place where the merchant vessels travel, and there are passenger steamers, too; but those are not the Sound boats, what are called the Sound boats—not the Long Island Sound boats between Fall River and New York.

The CHAIRMAN. What vessels go through there?

Mr. GREENE. The vessels that go through there are the freight and passenger vessels going up from New York as far as the Maine coast.

(At this point Hon. James R. Mann, chairman of the subcommittee, was called out of the committee room, and Hon. Thomas B. Kyle assumed the chair.)

Mr. GREENE (continuing). The Joy Line steamers and other passenger steamers and freight steamers are the ones that pass through there. It is not in the line of what we call the passenger travel

between New York and Boston. That goes mostly by steamers to Fall River and Providence, and then by rail from Providence and Fall River to Boston. But it is the line that runs between Baltimore and Boston. The lines from all southern ports to Boston, passenger, freight, and everything else, pass through the Vineyard Sound. They can not go outside in the Atlantic Ocean because they are likely to be blown ashore. They get in there, and it is a very severe place, but it is not in the line of travel for all passenger vessels.

Mr. KYLE. How often have you had this recommended?

Mr. GREENE. It is a new scheme, called for by the Boston interests; it happens to be located in my district, but it does not affect my interests locally. It is a new scheme to require a light vessel on this Hedge Fence Shoal.

Mr. KYLE. How long has this been a thoroughfare for travel, as it is now?

Mr. GREENE. Since the world began.

Mr. KYLE. What is the necessity for it now any more than it has been heretofore?

Mr. GREENE. The amount of travel increases all the time, and the degree of necessity increases accordingly.

Mr. KYLE. How materially has it increased in the past year?

Mr. GREENE. I do not know that I can give you any statistics in that line, so far as that is concerned; but besides the general advantage of this light-ship, there would be this particular advantage to be derived by the passenger steamers that run from New Bedford and Woods Hole to northern Connecticut. This would be of great benefit to them.

Mr. KYLE. What necessity is there for it now more than there was a year ago, or two years ago?

Mr. GREENE. I suppose this ought to have been introduced before; undoubtedly it should have been.

Mr. KYLE. Do you want to make any further statement about it?

Mr. GREENE. No; I think it is certainly necessary, and ought to be granted, if possible. I think if the committee favorably reports it there will be no difficulty about it at all, because I think I read in the Record the other day that Senator Lodge had put it on the appropriation bill on the Senate side.

Mr. KYLE. Was there a similar bill to this introduced in the Senate?

Mr. GREENE. Yes; and it has been favorably reported there, and Senator Lodge has put it on the appropriation bill, which they have a right to do there, but we can not get it on in that way on this side.

Mr. KYLE. Yes.

Mr. GREENE. I have another bill here for a light-vessel. I do not know whether that was included in your desire to hear from me or not.

Mr. KYLE. What is the number of that, Mr. Greene?

Mr. GREENE. No. 18966. I will explain the features of that if you would like to hear it, and why it is necessary.

Mr. KYLE. This you have just introduced?

Mr. GREENE. Yes; I will explain the necessity for it, and the reason why I introduced it. That is at the entrance of Buzzards Bay. It is a place where the fogs are very heavy, and there is at present a light-ship there which is about one of the oldest ones in the service. I tried to get along without putting in a bill for a new light-ship by

trying to have a steam whistle put upon the present light-ship, because the bell that is up there can not be heard at all.

There is a passenger line newly established between New York and New Bedford. Captain Bibber, whom I know very well, and who has run out of the port where I resided for a great many years, is the master of one of the steamers that goes in there, and he has appeared before the light-house inspector and presented his facts and showed the utter impossibility to hear the sound of the bell; and the inspector has reported that it is necessary to have a steam whistle, and in order to have this steam whistle there must be a new light-vessel. The light-vessel that is there now is not heavy enough to carry the steam whistle.

Mr. KYLE. You have no report at all on this from the Light-House Board?

Mr. GREENE. I am not sure if a report has come in, but the Light-House Board approves of it fully.

Mr. KYLE. You do not know what they say about the immediate necessity for it?

Mr. GREENE. It is immediate. I guarantee that they will say that, and I will get that statement in a few days.

I will tell you why it is needed. There are a number of passengers on this vessel and there is no safety for them. During those terrific snow storms that we have had recently the vessel has almost been obliged to go ashore and stay there, because she had no means of knowing where she was going. We might go to the expense of putting a steam whistle on it, but the sound of other bells in the vicinity is such that you could not distinguish this bell from them. The Light-House Board say that, after an investigation by the inspector. Commander Bartlett, located at Boston, decided that he could not put a steam whistle on this present vessel.

Mr. KYLE. If there were to be only one of these two granted, on account of the spirit of economy that now seems to be prevailing, which of the two ought to be granted, in your opinion? Which one is the more important?

Mr. GREENE. I do not want to cut out the first one at all. I would like to have this very much. Of the two, I should think the last one was the most necessary.

Mr. KYLE. This Hen-and-Chicken one?

Mr. GREENE. Yes, undoubtedly, because there is no provision there except that. But each one must take its turn in the line. If you can not take up but one, I would not report against this one, H. R. No. 14832. I think that will come before the House already on the appropriation bill, put on by the Senate. As for the bill No. 18966 there is such an extreme necessity for it that it ought not to lie over. It has been developed by reason of the establishment of this line of passenger steamers between New Bedford and New York.

Mr. KYLE. How recently has that been put in operation?

Mr. GREENE. That has been established during the last year, and the necessity for it has been more strongly accentuated by reason of the bad weather that we have had in the last few weeks. And they feel the necessity for it in the fog season just the same. If you have a map here of Buzzards Bay, you will see that that is a narrow space, and there is practically no protection at all there, except from this little light-vessel. Of course, if it were only a question of light, we

could put in any kind of a hulk, as I suggested to these parties when they first spoke to me about it. But we tried that, and the vessel was not heavy enough to sustain the steam whistle. That is the only necessity for the replacing of this vessel by another, and that necessity is an extreme one, and it is one which, as I say, has been developed more particularly by the very severe storms that we have had this year, so that we feel that it is a great necessity.

I do not know anything further that I can say on it, but the Light-House Board said it had had this matter under consideration, and our engineer has reported to them, and I have talked to them about it, and they have said to me that they thought it was a very extreme necessity. I thank you, Mr. Chairman, for the privilege of this hearing.

Mr. KYLE. You are quite welcome, sir.

**STATEMENT OF HON. EDWARD DE V. MORRELL, REPRESENTATIVE
FROM PENNSYLVANIA.**

Mr. KYLE. What is the number of your bill, Mr. Morrell?

Mr. MORRELL. It is H. R. No. 14257.

Mr. Chairman, I regret that, not knowing there was going to be a hearing on this bill, I have not got all the data and papers together which I have in connection with it, showing the necessity for this new vessel.

This Fourth light-house district takes in the coast from a point on the shore of New Jersey down to a point on the eastern shore of Virginia, and all the navigable waters which lie between those points. It is therefore of great necessity to New Jersey, and to Pennsylvania and Delaware, because it takes in Delaware Bay and Delaware River; and it is also of interest to Virginia, because it takes in Chesapeake Bay, or a certain portion of it.

Mr. KYLE. Have you any data, Mr. Morrell, other than such as has been furnished by the Light-House Board?

Mr. MORRELL. No; the only data I have are the strong reasons which were brought before me for introducing this bill at the time when I introduced it. These data I have not here at present, but I will be very glad to send them to you.

Mr. KYLE. Can you do that right away?

Mr. MORRELL. I could not do it before to-morrow. I will have to telephone up to my office for them--to Philadelphia. I intended to bring them down with me when I came, but I was taken sick while I was away in the South during the holidays, and I have not been to Philadelphia since.

Mr. KYLE. There is a tender there now?

Mr. MORRELL. Yes; there is a tender; but a very insufficient one. It is old and poor.

Mr. KYLE. How long has it been in the service?

Mr. MORRELL. That I could not tell without those papers.

Mr. KYLE. I expect you had better furnish them right away, just as soon as you can.

Mr. MORRELL. All right, sir. I will. I will get them to you some time to-morrow.

Mr. KYLE. Yes; send them here to Mr. Mann.

Mr. MORRELL. All right. I am much obliged to you.

Mr. KYLE. Not at all.

**STATEMENT OF HON. GEORGE S. LEGARE, REPRESENTATIVE
FROM SOUTH CAROLINA.**

Mr. KYLE. Referring to your bill (H. R. 6478) for the construction of a light-house tender, what have you to tell us about this matter, Mr. Legare? Is there any necessity for it? Please confine your remarks now to things not included in what the Light-House Board has already said to us. You are, no doubt, impressed with the fact, Mr. Legare, that the Government wants to be as economical as possible now in the administration of its affairs and expenditures of money. Why can you not do without this for a while? What pressing need is there for it?

Mr. LEGARE. This present boat has been in existence down there since the year 1852; that is, the present boat, and she is a slow boat and in no way qualified to do the work.

Mr. KYLE. How long have they been using it for the purposes for which it is now used?

Mr. LEGARE. Since 1852.

Mr. KYLE. You say it is not in any way qualified to do the work. Has it not done it all the time?

Mr. LEGARE. It has to a certain extent, but it has never been satisfactory to the engineer department down there, and she is so old now and unfit for the work that the time has come when it is necessary to have a new boat to take her place. In other words, it is dangerous to use her much longer.

Mr. KYLE. The Light-House Board say that she is in such a condition that she is fit for service in anything except unusually bad weather, do they not?

Mr. LEGARE. My facts are gathered not from the Light-House Board, but from the department at Charleston and the men who have worked on the boat.

Mr. KYLE. You mean the board of engineers?

Mr. LEGARE. Yes; the board of engineers and the employees on the boat itself.

Mr. KYLE. From what you learn from them, is this of such necessity that it could not possibly, without injury to the service, be extended and continued for another year without this provision being made?

Mr. LEGARE. I would not like to say that it could not be extended for another year. But I will say this: If you gentlemen extend it for another year, or for two or three years, the responsibility, of course, is upon you; and I tell you we will, in all likelihood, run a serious risk of drowning a few men in case that boat is caught out in bad weather.

Mr. KYLE. Have there been any accidents on that boat?

Mr. LEGARE. Not that I know of.

Mr. KYLE. It is the apprehension that there might be, rather than there have been?

Mr. LEGARE. Yes; rather than that there have been.

Mr. KYLE. Have you any other statement that you wish to make, Mr. Legare, in addition to this?

Mr. LEGARE. That is practically all, Mr. Chairman. I simply want to urge upon the committee the necessity for giving the depart-

ment down there this new boat, and to say that I have absolutely no interest in the matter, one way or the other. It was really taken up with me by the engineer department in my district last year, and they showed me the necessity for it. It is not a thing in which I am personally interested in any way; but seeing the necessity for it, I have introduced this bill.

I really think they should have this new boat. You can readily understand that a boat that has been in use more than half a century, with patchwork repairs made on her from time to time, is not fit for work which at times is dangerous. Of course, the committee has the responsibility of saying whether or not they should allow the present boat to be used for another year or so; but it is a responsibility which I would not like to have resting on my shoulders, because the condition of the boat is such as to make it dangerous for her to be used in bad weather.

Thereupon, at 11.40 o'clock a. m., the subcommittee adjourned.

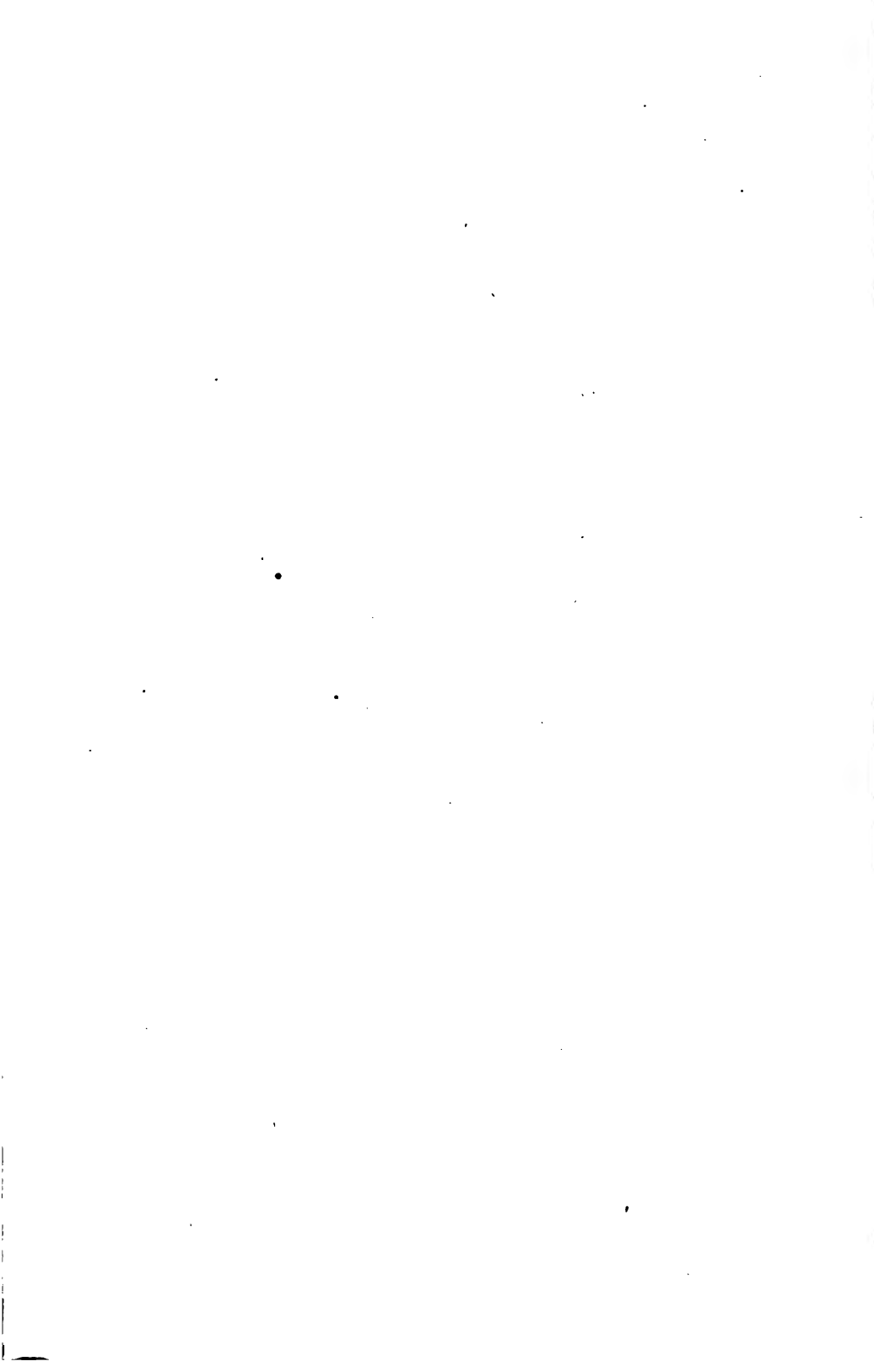
**REPORT OF SUBCOMMITTEE OF COMMITTEE
ON INTERSTATE AND FOREIGN
COMMERCE**

ON

**INVESTIGATION OF AFFAIRS OF PANAMA
RAILROAD COMPANY.**



**WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1905.**



INVESTIGATION OF THE AFFAIRS OF THE PANAMA RAILROAD.

A resolution approved January 12, 1905, authorized the Committee on Interstate and Foreign Commerce, or any subcommittee thereof, to investigate the affairs of the Panama Railroad Company. On January 13, 1905, a subcommittee was appointed consisting of the following: Mr. Shackelford, Mr. Lovering, Mr. Esch, Mr. Townsend, and Mr. Adamson.

Said committee herewith submits a report of the evidence taken by it:

Owing to the shortness of the session and the great press of business before the Committee on Interstate and Foreign Commerce, the subcommittee has not been able to take all the testimony which it otherwise would have taken. It was especially desired to investigate the relationship, if any, existing between the Pacific Mail Steamship Company and the transcontinental railroads.

The testimony shows that the management by the officers and directors of the Panama Railroad has been conspicuously able, progressive, and businesslike.

When the United States became the owner of a majority of the stock of the railroad company seven of the directors resigned and the seven Canal commissioners were elected in their places. This was done in pursuance of a letter from the President to Secretary Taft. Said letter among other things contained the following:

No salary or per diem allowance of compensation, in addition to the stated salary and per diem allowance of the members of the Isthmian Canal Commission, will be allowed to any member of the Commission by reason of his services in connection with the civil government of the Canal Zone, or his membership of any board or commission concerned in or connected with the construction of the canal, or by reason of his services as an officer or director of the Panama Railroad.

Notwithstanding this positive direction of the President several members of the Commission accepted and retained fees for attendance upon the meetings of the board of directors and the executive board as follows:

Commissioner Walker, for attendance as a director	\$250
Commissioner Burr, for attendance as a director	250
Commissioner Grunsky, for attendance as a director	250
Commissioner Parsons, for attendance as a director	175
Commissioner Parsons, for attendance as member of the executive board	220
Commissioner Harrod, for attendance as a director	125

The committee is of the opinion that under the direction of the President, as contained in the language quoted above, the Commissioners exceeded their authority in accepting said sums.

In the course of the hearings it developed that during the first six months after the Government took charge of the canal property the Canal Commission directed the officers of the railroad company to purchase supplies for the Commission. Requisitions for such supplies were made by Chairman Walker and other members of the Commission. No public advertisement for such supplies was made nor any competitive bidding sought. No general opportunity for bids was given. These purchases amounted to about \$233,000. These purchases were said to have been made on emergency orders, but the evidence discloses that a very large portion of such supplies were not actually needed at the time of the purchase and have not yet been used. In fact supplies were received in such quantities and so much more rapidly than needed that the terminal facilities of the railroad were inadequate to care for them, and some of them had to be rehandled and reshipped at extra expense to the Government. It is the opinion of the committee that the best interests of the Government would be subserved by advertisement for competitive bidding by responsible persons.

An examination of the evidence will disclose that the Panama Railroad, with its connecting line of ships, is a very valuable property. It has shown its capacity to earn substantial dividends for many years. Undoubtedly the traffic over the line could be greatly increased by improving the ship service connected with it. There ought to be prompt and direct connecting lines of steamers running on regular schedules between Colon and New York, between Colon and some Gulf port, and between Panama and San Francisco. By such arrangement the time between San Francisco and Gulf ports could be reduced to fifteen days and between San Francisco and New York to seventeen days. It must be apparent to everybody that such a reduction in through time would greatly increase the amount of the traffic.

The successful construction of the Panama Canal demands that the United States shall own and operate the Panama Railroad. In doing this, however, neither its earning capacity nor its efficiency as an artery of commerce should be impaired.

Under careful management the railroad is worth many millions of dollars. To discontinue its use as a public highway would be the wanton destruction of this vast asset.

For more than fifty years the Panama Railroad has been used as an international highway. The nations have acquired an interest in its use, and it would be impolitic and unjust for the United States to now close it to the commerce of the world.

It should also be kept in mind that the Panama Railroad and connected ship lines have had a marked effect in reducing the rates of the transcontinental railroads. Further reductions could be secured by reducing the charges by the Isthmian route which could be done materially and still keep within the limit of fair and remunerative rates. If the Panama Railroad were to be discontinued as a public highway it would undoubtedly result in the raising of the rates on the transcontinental lines.

Then it must not be forgotten that the United States will have to transport great numbers of men and large quantities of material during the construction of the canal. If the ships belonging to the railroad are disposed of then the Government will be at the mercy of the ship trust.

The committee, therefore, is of the opinion that the Government should operate the Panama Railroad as a public highway and in connection therewith should operate lines of ships between Colon and New York, between Colon and some Gulf port, and between Panama and San Francisco. A fair and remunerative rate should be charged. Such a plan would not only return to the Government a fair revenue, but in addition would regulate many rates of transportation in the interest of the people.

In carrying out the policy herein outlined some of the Government transports could be used to supplement the steamers now owned by the Panama Railroad Company.

The Panamal Canal when completed is to be owned and operated by the Government. During its construction the Government may with equal propriety operate the railroad and connected ship lines.

The committee believes that for the present it is best to continue the general offices of the railroad at New York, and that this can be done at a great reduction of the present expense. It is the point of origin of a large amount of the freight carried over the Isthmus. It is well connected by telegraph with every part of the country.

The committee is of the opinion that the United States should secure ownership of the entire stock of the Panama Railroad Company.

All of which is respectfully submitted.

DORSEY W. SHACKLEFORD.

WM. C. LOVERING.

JOHN J. ESCH.

CHAS. E. TOWNSEND.

W. C. ADAMSON.

TESTIMONY.

TESTIMONY.

24 STATE STREET,
New York City, February 13, 1905.

Present, Hon. D. W. Shackelford (chairman), Hon. Wm. C. Lovering, Hon. John J. Esch, Hon. Charles E. Townsend, and Hon. William C. Adamson, committee.

Also, Mr. J. Edward Simmons, president; Edward A. Drake, vice president and secretary; William Nelson Cromwell, general counsel; Sylvester Deming, treasurer; and Vernon H. Brown, director; of the Panama Railroad Company.

Meeting called to order at 10.35 a. m.

The CHAIRMAN (Mr. Shackelford). I will ask Mr. Simmons, Mr. Cromwell, and Mr. Drake, who are present, to appear as witnesses, and they will be sworn.

Mr. J. Edward Simmons, Mr. Edward A. Drake, and Mr. William Nelson Cromwell were then sworn by the chairman.

Mr. ESCH. I would suggest, Mr. Chairman, that the resolution of the House of Representatives providing for this hearing be introduced here.

The CHAIRMAN. That may be done; the resolution may be inserted and marked Exhibit 1.

EXHIBIT No. 1.

[House of Representatives, Resolution No. 384, Fifty-eighth Congress, third session, Report No. 3474.]

Mr. Shackelford submitted the following resolution:

Whereas the United States is now the owner of more than ninety-eight per centum of the shares of the capital stock of the Panama Railway Company and it is for that reason expedient that Congress should have full knowledge of the affairs of said company: Therefore, be it

Resolved, That the Committee on Interstate and Foreign Commerce be, and is hereby, directed to investigate the operation, management, and condition of said railway company and all franchises and property belonging thereto, including steamships owned, operated, or controlled by it, or under any contract or agreement of any kind or character with it; that such committee make such investigations and report the testimony with their conclusions thereon as soon as possible, and that said committee or any duly appointed subcommittee thereof shall have power to examine any or all records, books, documents, accounts, and vouchers of said company, or of any officer or agent thereof or of any person, company, or corporation which may have had any agreements or relations with said railway company, and all records and minutes of the acts and proceedings of any meeting of the stockholders or directors of said railway company, and shall have power to administer oaths, to employ or have the services of a stenographer, clerk, accountant, and messenger, and incur such other expenses as may be deemed necessary; that the meetings of said committee or subcommittee be held in the Capitol building at the city of Washington and in such other places as said committee or subcommittee shall determine, and the necessary expenses shall be paid out of the contingent fund of the House on the usual vouchers.

The CHAIRMAN. Mr. Simmons, I believe you are the president of the board of directors?

Mr. SIMMONS. Yes; I am president of the company.

The CHAIRMAN. Will you provide us with the annual report of the board of directors for 1902, and immediate preceding years?

Mr. SIMMONS. Yes; I hand you copies of the annual report of the years 1893 to 1903, inclusive.

The CHAIRMAN. Mr. Townsend, you may examine Mr. Simmons with reference to the reports first.

Mr. TOWNSEND. I will ask you, Mr. Simmons, what is your full name and your connection with this company?

Mr. SIMMONS. My name is Joseph Edward Simmons, and I am president of the Panama Railway Company.

Mr. TOWNSEND. How long have you occupied that position?

Mr. SIMMONS. I was elected in 1895.

Mr. TOWNSEND. Had you been connected with the railroad as stockholder or director prior to that time?

Mr. SIMMONS. I had.

Mr. TOWNSEND. For how long?

Mr. SIMMONS. Several years.

Mr. TOWNSEND. Can you tell when you first became associated with this railroad in an official capacity?

Mr. SIMMONS. I can not; the records will show.

Mr. DRAKE. About 1889.

Mr. SIMMONS. About 1889; yes.

Mr. TOWNSEND. You had been a stockholder prior to that?

Mr. SIMMONS. No; I had not been a stockholder prior to that.

Mr. TOWNSEND. But you became director at the time you became a stockholder?

Mr. SIMMONS. Yes.

Mr. TOWNSEND. What was this corporation originally capitalized for?

Mr. SIMMONS. I think the original incorporation was \$7,000,000.

Mr. TOWNSEND. Your offices are in the city of New York?

Mr. SIMMONS. They are.

Mr. TOWNSEND. For how long have they been here?

Mr. SIMMONS. Ever since I have been connected with the company.

Mr. TOWNSEND. You keep all of your records in this office?

Mr. SIMMONS. About all the records, excepting such records as are necessarily kept at the Isthmus.

Mr. TOWNSEND. What records are those?

Mr. SIMMONS. Relating to the office of the superintendent.

Mr. TOWNSEND. Does he make reports to the office here?

Mr. SIMMONS. He does.

Mr. TOWNSEND. How often?

Mr. SIMMONS. Whenever we call for them.

Mr. TOWNSEND. There is no stated period for him?

Mr. DRAKE. The mail arrives every Tuesday, bringing the operations up to date.

Mr. TOWNSEND. Filed and adopted.

Mr. SIMMONS. Oh, yes; they are adopted.

Mr. DRAKE. The reports of accounts are made up monthly, quarterly, semiannually, and annually. The annual reports are compiled

from those. We are constantly in communication with the Isthmus by every Tuesday's arrival.

Mr. TOWNSEND. So that practically your complete record is here in the office, with the exception of the report of a few weeks back?

Mr. DRAKE. Yes, sir; for fifty years back they have been preserved and are in a fireproof apartment of this office.

Mr. TOWNSEND. Please say who constitute your present board of directors.

Mr. CROMWELL. I will read the names of the present board of directors: Edward A. Drake, J. Edward Simmons, Samuel M. Felton, J. H. Parker, William Nelson Cromwell, Vernon H. Brown, John D. Walker, William H. Burr, C. Ewald Grunsky, William Barclay Parsons, G. W. Davis, B. M. Harrod.

Mr. TOWNSEND. When were those gentlemen elected directors?

Mr. SIMMONS. The records will tell.

Mr. TOWNSEND. Were they elected at your regular annual meeting?

Mr. SIMMONS. Yes; every year we elect our board of thirteen directors.

Mr. TOWNSEND. When?

Mr. CROMWELL. In April of each year. The following-named members were elected at the last annual meeting, April, 1904, to wit: Edward A. Drake, J. Edward Simmons, Samuel M. Felton, J. H. Parker, William Nelson Cromwell, and Vernon H. Brown. During the year, by resignations of those who formerly occupied the places, there have been elected Messrs. Walker, Burr, Grunsky, Parsons, Davis, Harrod, and Hecker. The latter has resigned.

Mr. SIMMONS. We elect a board of directors every year, and whenever a vacancy occurs we fill it.

Mr. CROMWELL. If you would like to know when the election of the new members occurred during the year, we show that.

Mr. TOWNSEND. Mr. Simmons, your board of directors elected you president immediately after the election of the directors?

Mr. SIMMONS. I think I was elected president, soon after the death of Gen. John Newton, by the board of directors. He died in office, and I was elected to succeed him. After the board of directors were elected they then elected me president in May, 1895.

Mr. TOWNSEND. Have you devoted your entire time to the business of the company since you were made president?

Mr. SIMMONS. I have exercised general supervision over the affairs of the company since I have been president.

Mr. TOWNSEND. Have you devoted your entire time?

Mr. SIMMONS. Not the entire time, no.

Mr. TOWNSEND. What proportion of your time have you devoted to the affairs of the railroad company?

Mr. SIMMONS. I have been in constant contact with the office, and when my judgment has been asked upon any question that has been submitted to me I have given it. I have always attended the meetings of the board of directors, which take place twice a month. I am chairman of the executive committee, which holds its meetings twice a week.

Mr. TOWNSEND. How much stock do you hold in the company?

Mr. SIMMONS. One share. I had five shares, but I have only one.

Mr. TOWNSEND. How much are the shares?

Mr. SIMMONS. One hundred dollars a share.

Mr. TOWNSEND. Are five shares the most you have ever owned in the company?

Mr. SIMMONS. Yes.

Mr. TOWNSEND. How many did you have in 1889, when you became a member of the company?

Mr. SIMMONS. I don't remember how many shares I had in 1889. I never held over five shares.

Mr. TOWNSEND. What is your salary, Mr. Simmons?

Mr. SIMMONS. Ten thousand dollars a year.

Mr. TOWNSEND. What other officers does this company have?

Mr. SIMMONS. We will give you the list of officers.

Mr. DRAKE. That is a list of the officers [handing statement to Mr. Townsend].

Mr. CROMWELL. The general superintendent has resigned.

Mr. TOWNSEND. So that J. Edwards Simmons is president and George Whaley is vice-president—

Mr. CROMWELL. Mr. Whaley has resigned.

Mr. TOWNSEND. This is the salary list also.

Mr. SIMMONS. Yes.

Mr. DRAKE. That is the salary list of the New York end of the railroad company.

Mr. TOWNSEND. I will ask you to look at that, Mr. President, and say if you can identify it as a correct statement of all the salaried officers and the salaries they individually receive, of the New York end of the Panama Railway Company [handing list to Mr. Simmons].

Mr. SIMMONS. It is correct, to the best of my knowledge and belief.

Mr. TOWNSEND. You may mark that, Mr. Reporter, as Exhibit 2.

EXHIBIT No. 2.

Panama Railroad Company salary list, January 23, 1905.

Executive officers :	Per annum.
President	\$10,000.00
Vice-president and secretary	8,500.00
General manager	7,000.00
Secretary's office :	
Assistant secretary	2,400.00
Stenographer and typewriter	1,000.00
Do	1,000.00
Porter and messenger	600.00
Office boy	312.00
Telephone boy	216.00
Accounting department :	
Treasurer	5,200.00
Freight cashier	1,200.00
Teller and bank messenger	900.00
Auditor	3,300.00
General clerk	1,800.00
Bookkeeper	1,620.00
General clerk and typewriter	1,000.00
Clerk	1,000.00
Manifest clerk	1,020.00
Voucher record clerk	840.00
Manifest clerk	840.00
Do	540.00
Clerk and messenger	240.00

Traffic department:		Per annum.
Traffic manager		\$6,000.00
Chief clerk		1,920.00
Freight solicitor		1,800.00
Ticket agent		1,500.00
Manifest clerk		1,580.00
Claim agent		1,500.00
Way-bill clerk		1,200.00
Assistant freight solicitor and clerk		1,080.00
Clerk		900.00
Stenographer and typewriter		900.00
Assistant manifest clerk		840.00
Messenger		720.00
Manifest typewriter		720.00
Billing clerk		720.00
Clerk		720.00
Assistant manifest typewriter		540.00
Junior clerk		312.00
Inspecting engineer		2,400.00
Clerk and typewriter		816.00
Purchasing agent		1,500.00
Clerk		150.00

New York, January 23, 1905.

PIER AND STEAMERS.

Pier No. 67, North River, New York :

Terminal superintendent	8,300.00
Clerk	1,050.00
Office boy	360.00
Receiving clerk	1,200.00
Assistant receiving clerk	900.00
Delivery clerk	1,200.00
Baggage master, etc	960.00
Carpenter	1,080.00
Cooper	1,080.00
Head watchman (\$3 per day)	1,080.00
Tally clerk	780.00
Tallyman	720.00
Gateman	720.00

Steamers :

	Per month of 30 days.
Captains	\$200.00
Mates	75.00
Second mates	50.00
Third mates	40.00
Chief engineers	150.00
First assistant engineers	90.00
Second assistant engineers	80.00
Third assistant engineers	70.00
Pursers	90.00
and	75.00
Freight clerks	50.00
Stewards	75.00
and	65.00
Surgeons	50.00

NOTE.—Each of the above receive \$1 per day board while in port, New York.

New York, January 23, 1905.

EXHIBIT No. 3.

Panama Railroad Company—Salaries of general officers on the Isthmus.

EXECUTIVE OFFICERS.		Per annum.
General superintendent.....		\$8,000. 00
Secretary to general superintendent and land agent.....		3,300. 00
Local auditor.....		2,700. 00
Cashier.....		2,700. 00
TRANSPORTATION DEPARTMENT.		
Assistant superintendent.....		3,600. 00
Train master.....		2,280. 00
Acting freight agent and port captain, La Boca.....		2,700. 00
Assistant freight agent and port captain, Colon.....		2,700. 00
MECHANICAL DEPARTMENT.		
Master mechanic.....		2,700. 00
ROAD DEPARTMENT.		
Road master.....		2,700. 00
SUPPLY DEPARTMENT.		
Commissary.....		2,700. 00
LEGAL DEPARTMENT.		
Counsel, Panama.....		1,728. 00
Lawyer, Panama.....		1,484. 00
Real estate lawyer, Colon.....		1,200. 00

FEBRUARY 6, 1905.

Mr. DRAKE. That list also includes the personnel of the steamers.

Mr. TOWNSEND. Has the amount of the salaries been changed any within the last year?

Mr. SIMMONS. Not any material changes; no, sir.

Mr. TOWNSEND. Has it within the last two years?

Mr. SIMMONS. No, sir.

Mr. TOWNSEND. Are you prepared to tell what changes have been made in that list?

Mr. SIMMONS. I can not tell.

Mr. TOWNSEND. Does Mr. Drake know?

Mr. SIMMONS. Mr. Drake is the operating officer of the road; he can give the minor changes. There have been no material changes.

Mr. TOWNSEND. Have you a list of the officers at the Panama end of the road?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. You stated that the first vice-president, Mr. Whaley, had resigned.

Mr. SIMMONS. Yes.

Mr. TOWNSEND. When did he resign?

Mr. CROMWELL. We will give you the date. September 13, 1904.

Mr. SIMMONS. It must have been five months ago.

Mr. TOWNSEND. What was the occasion for his resignation?

Mr. SIMMONS. Well, he desired to retire.

Mr. TOWNSEND. Was his resignation voluntary on his part?

Mr. SIMMONS. Entirely so.

Mr. TOWNSEND. The board did not request it?

Mr. SIMMONS. No.

Mr. TOWNSEND. Who was elected in his place?

Mr. SIMMONS. Mr. Drake.

Mr. TOWNSEND. So you have abolished the office of first vice-president?

Mr. SIMMONS. Yes, sir.

Mr. TOWNSEND. Mr. Drake, who was second vice-president and secretary, is now first vice-president?

Mr. SIMMONS. He is now vice-president. We do not have any second vice-president and secretary.

Mr. TOWNSEND. Vice-president and secretary?

Mr. SIMMONS. Yes, sir.

Mr. TOWNSEND. At what salary?

Mr. SIMMONS. I can not give the salary.

Mr. DRAKE. A combined salary of \$8,500 for both offices.

Mr. TOWNSEND. What was the second vice-president and secretary's salary prior to Mr. Whaley's resignation?

Mr. DRAKE. \$8,500—the same as it is now.

Mr. TOWNSEND. So that now Mr. Drake is acting as vice-president and secretary, whereas he was formerly second vice-president and secretary; and receives \$8,500.

Mr. CROMWELL. He performs the duties now formerly devolving upon the first vice-president. The first vice-president received how much?

Mr. DRAKE. \$5,500 per year.

Mr. TOWNSEND. Mr. Simmons, can you tell me what duties the first vice-president performed prior to Mr. Whaley's resignation?

Mr. SIMMONS. Do you mean Mr. Whaley's duties when he was vice-president?

Mr. TOWNSEND. Yes.

Mr. SIMMONS. He represented the owners of the property over in Paris. He represented matters connected with the property here and the owners over there. He was our medium of communication.

Mr. DRAKE. He was at the head of the European department?

Mr. TOWNSEND. What were the duties of the second vice-president prior to Mr. Whaley's resignation?

Mr. SIMMONS. Well, his duties were here operating the road. He was the operating officer, and attended to the detail management of the office.

Mr. ESCH. Your charter specifies the duties of these officers?

Mr. CROMWELL. The by-laws do.

Mr. ESCH. Can we have a copy of the charter and the by-laws?

Mr. CROMWELL. Yes, sir.

Mr. ESCH. I would like to have those filed as exhibits.

The by-laws and charter of the Panama Railroad Company follow, and are marked "Exhibit 4a and 4b."

EXHIBIT 4b.

CHARTER AND AMENDED BY-LAWS OF THE PANAMA RAILROAD COMPANY.

AN ACT to incorporate the Panama Railroad Company, passed April 7, 1840.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. William H. Aspinwall, John L. Stephens, Henry Chauncey, James Brown, Cornelius W. Lawrence, Gouverneur Kemble, Thomas W. Ludlow, David Thompson, Joseph B. Varnum, Samuel S. Howland, Prosper M. Wetmore, Edwin

Bartlett, Horatio Allen, and their associates, successors, and assigns, are hereby constituted a body corporate, by the name of the "Panama Railroad Company," for the purpose of constructing and maintaining a railroad, with one or more tracks, and all convenient buildings, fixtures, machinery, and appurtenances, across the Isthmus of Panama, in the Republic of New Granada, under the grant made by the said Republic to the said William H. Aspinwall, John L. Stephens, and Henry Chauncey, and of purchasing and navigating such steam or sailing vessels as may be proper and convenient to be used in connection with the said road; and for such purposes all the necessary and incidental power is hereby granted to the said corporation.

Sec. 2. The capital stock of the said corporation shall be fixed by the directors at a sum not less than one million of dollars, with liberty to increase the same at any time to a sum not exceeding five millions of dollars. Said stock shall be divided into shares of one hundred dollars each, and shall be deemed personal property, transferable in such manner as the by-laws of the said corporation shall direct. The said corporation may commence operations when five hundred thousand dollars shall have been subscribed, and twenty per cent on each share subscribed for, paid in. The said William H. Aspinwall, John L. Stephens, and Henry Chauncey shall be commissioners to receive subscriptions for the said capital stock, and if the whole capital stock shall not be subscribed at the time first appointed, other subscriptions may be at any time received, until the whole amount shall be subscribed, at such times and under such rules and regulations as they shall prescribe.

Sec. 3. The concerns of the said corporation shall be managed by thirteen directors, who shall be stockholders, and who (except the first directors hereby appointed) shall hold their offices for one year, and until others are chosen in their places. The persons named in the first section of this act shall be the first directors, and shall hold their offices until the first Monday of April, in the year one thousand eight hundred and fifty-one, and until others are chosen in their places. The directors, except for the first two years, shall be annually chosen at such time and place in the city of New York, and on such notice as shall be directed by the by-laws of the said corporation. In all meetings of the stockholders each share shall entitle the holder to one vote, to be given in person or by proxy. In case it should at any time happen that an election of directors shall not be made on the day appointed by the by-laws of the said corporation, the said corporation shall not for that cause be deemed to be dissolved, but such election shall be held on any other day which shall be appointed by the directors of said association.

Sec. 4. The directors (of whom five shall constitute a quorum for the transaction of business) shall appoint one of their number to be president, and may appoint such other officers and agents as they shall deem necessary, and they may make and establish such by-laws, rules, and regulations as they shall think proper and expedient, touching the disposition and management of the property, estate, and effects of the said corporation; the transfer of shares, the duties and conduct of their officers and servants, the election and meeting of the directors, and all matters whatsoever which may appertain to the concerns of said corporation. When any vacancy shall happen among the directors, it may be filled by the remaining directors; and the directors may remove all officers appointed by them, and appoint others in their place, and fill all vacancies in the offices.

Sec. 5. The directors may require payments of subscriptions to the stock at such times and in such proportions as they may deem proper, under the penalty of forfeiting all stock and previous payments made thereon, and may sue for and recover all such subscriptions. Notice of the time and place of such payments shall be published for four weeks previous to such time, at least once in each week, in two newspapers published in the city of New York.

Sec. 6. The said corporation may have a common seal, and the same may alter or renew at pleasure; and all contracts made may be either verbal or under the signature of the president, secretary, or other officer or agent of the said corporation, and with or without the corporate seal.

Sec. 7. It shall be lawful for the said corporation to contract with the said William H. Aspinwall, John L. Stephens, and Henry Chauncey for the purchase of all the rights, privileges, and immunities granted to them by the said Republic of New Granada, and for the purchase of the lands granted to them by the said Republic, and to receive a conveyance of and hold the same in like manner as the said William H. Aspinwall, John L. Stephens, and Henry Chauncey now do or can do; and to lease, or sell and convey any of such lands which the said corporation shall not deem it necessary to retain, and to build and construct all such buildings, piers, docks, basins, and harbors on the said lands as the said

corporation may deem expedient, in like manner as the said William H. Aspinwall, John L. Stephens, and Henry Chauncey can do under the said grant.

Sec. 8. The said corporation may borrow from time to time such sum or sums of money as may be necessary to complete said road, and for the other purposes authorized by this act, in the whole not exceeding the amount of the capital stock actually paid in, and may issue and dispose of their bonds for any amount so borrowed; and are hereby authorized to mortgage any part of their corporate property and privileges to secure the payment of such bonds; and the said directors may confer on the holder of any bond they may issue, for any money so borrowed, the right to convert the principal due thereon into stock of the said corporation at any time not exceeding five years from the date of said bond, under such regulations as the directors may see fit to adopt; and for such purpose the said corporation are authorized to increase its capital stock to the amount so borrowed, whenever the persons, or any of them, to whom such money is due shall elect to convert the same into stock: but nothing herein contained shall be construed to authorize an increase of the capital stock of said company beyond the sum of five millions of dollars.

Sec. 9. Each and every stockholder shall be individually liable to the creditors of said corporation for all debts that may be due and owing by said corporation to their laborers and servants for services performed, and for all other debts and liabilities of the said corporation, to an amount equal to the amount of stock held by him, until he shall have paid in full the amount of such stock so held. But no stockholder shall be personally liable for the payment of any debt contracted by the said corporation which is not to be paid within one year from the time the debt is contracted, nor unless a suit for the collection of such debt shall be brought against said corporation within one year after the debt shall become due; and no suit shall be brought against any stockholder in said corporation for any debt so contracted, unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in said corporation, nor until an execution against the corporation shall have been returned unsatisfied in whole or in part. No person holding stock in said company as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of said company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator, or intestate, or the ward, or person interested in such fund, would have been if he had been living and competent to act, and held the stock in his own name. Every such executor, administrator, guardian, or trustee shall represent the shares of stock owned by him as such administrator, guardian, or trustee at all meetings of the company, and may vote as a stockholder, and every person pledging his stock as aforesaid may in like manner represent the same and vote accordingly.

Sec. 10. This act shall take effect immediately.

AN ACT to amend the act entitled "An act to incorporate the Panama Railroad Company," passed April 7, 1849, passed April 12, 1855.

The people of the State of New York, represented in senate and assembly, do enact as follows:

§ 1. It shall be lawful for the Panama Railroad Company to borrow, from time to time, in addition to the amount limited by the act to incorporate said company, passed April 7, 1849, such sum or sums of money as may be necessary to complete their road, and for the other purposes authorized by said act; to issue and dispose of their bonds for the reimbursement of any amount to be borrowed, or which may have been borrowed by them, and to mortgage any part of their corporate property and privileges, to secure the payment of said bonds; and they may confer upon the holder of any bond which they may so issue the right to convert the principal represented thereby into the stock of said corporation, at any time not exceeding five years from the date of said bond, under such regulations as the directors may see fit to adopt, whenever any person or persons holding any such bond shall elect to convert the same into stock; and for such purpose the said incorporation are hereby authorized to increase their capital stock from time to time; so, however, that the whole capital of said company shall not exceed the sum of seven millions of dollars, anything in said act to the contrary notwithstanding.

§ 2. This act shall take effect immediately.

EXHIBIT 4a.

AMENDED BY-LAWS OF THE PANAMA RAIL ROAD COMPANY.

AMENDED BY-LAWS.

ARTICLE I.

The election for directors of this company shall be held at the office of the company, in the city of New York, on the first Monday of April in each year.

Three stockholders shall be chosen by the board, at a preceding meeting, to act as inspectors. The polls shall be opened at noon, and continue open until two o'clock in the afternoon.

The board of directors shall consist of thirteen stockholders, five of whom, if the president or vice-president be one, shall constitute a quorum for the transaction of business at the meetings of the board.

ARTICLE II.

The officers of this company shall consist of a president, a vice-president, a secretary, an assistant secretary, and a treasurer, the three latter to hold office at the pleasure of the board. The offices of vice-president and secretary may be filled by one person.

The president and vice-president shall always be members of the board of directors, and the said officers shall be elected by the board annually, within eight days after the election of the directors. The vote shall be by ballot, and a majority of all the members of the board shall be necessary to a choice.

In addition to the officers before named, the board may from time to time appoint a general manager and such additional officers, engineers, and agents as the business of the company may require.

The salaries of the several officers, engineers, or agents shall be fixed by the board, and no extra allowance or compensation shall be made except with the approbation of the board.

In case of any failure to hold any election for officers, those in office shall hold their places and be legally qualified to act until an election shall be held.

ARTICLE III.

The duties of the president shall be to preside at the meetings and to exercise a general supervision over the affairs of the company. He shall have power to call meetings of the directors at such time or times as he shall think proper, and it shall be his duty to call such meetings upon the written requisition of two or more of the directors stating the object for which they wish such meetings convened.

The vice-president shall, in the absence of the president, exercise all the powers and functions which may in any way be delegated to the president.

ARTICLE IV.

It shall be the duty of the secretary to be present at the meetings of the board, to keep a record of all its proceedings, and to enter the same in the minute book; to send notices to the directors of all meetings which are to be held, and attend to such other duties as may be directed by the president or the vice-president.

The assistant secretary shall, in the absence of the secretary, exercise all the powers and functions which may in any way be delegated to the secretary.

ARTICLE V.

It shall be the duty of the treasurer to receive and disburse under the direction of the board, all moneys belonging to the company, and to keep regular and systematic accounts of all such receipts and disbursements, and to make detailed reports of such receipts and disbursements to the directors at each stated meeting of the board. He shall cause to be deposited all moneys received by him for or on account of the company in such bank or banks as the board may select, or to make such disposition of the funds as the board of directors or the finance

committee may direct; and all deposits in banks shall be entered in a book in the usual way to the credit of the company.

All checks and orders upon the funds of the company shall be drawn on the bank or institution in which the money of the company may be deposited, and such checks and orders shall be signed by the president, or vice-president, and the treasurer; or by the president, or vice-president, and a director to be appointed by the board; or, in the absence of the president and vice-president, by the treasurer and a director to be appointed by the board; and be drawn to the order of the party to whom the payment is made.

However, in cases of payment for wages due persons in the employ of the company, the checks drawn upon a special deposit in bank, called the Isthmus Draft Account, shall be signed by either one of the following persons: The president, the vice-president, the treasurer, or a director designated by the board.

The treasurer shall register all transfers of stocks, and for this purpose he shall keep the account of the stock registered and transferred in such form and manner and under such regulations as the board of directors may from time to time prescribe, and it shall be his duty to examine and audit accounts, and to attend to such other duties as may be designated by the president or vice-president.

The treasurer shall also keep the dividend books and record of bonds, attend to the payment of dividends and interest money.

ARTICLE VI.

It shall be the duty of the general manager to have charge of and to manage, under the direction of the president or vice-president, the practical operations of the rail road and steamship lines and transportation interests of the company.

ARTICLE VII.

All transfers of stock shall be made in the usual form, by the stockholders signing, in proper person or by attorney, in a book to be prepared and kept by the treasurer for that purpose a declaration of sale or transfer, setting forth the number of shares transferred, the person to whom, and the time when, the same are so transferred; and at the time of such transfer the old certificates of the shares so transferred shall in all cases be surrendered and canceled and a new certificate shall be issued in lieu thereof.

All certificates issued shall be signed by the president, or the vice-president, and the secretary.

ARTICLE VIII.

There shall be a stated monthly meeting of the board of directors on the second and fourth Thursday of each month.

A full and complete statement of the affairs of the company shall be submitted to the board of directors at any regular or special meeting held in the month of March, showing the result of the operations of the company for the preceding fiscal year ending December 31st.

Dividends may be declared at any meeting of the board of directors, stated or otherwise, payable at such times as the board may appoint.

ARTICLE IX.

There shall be a standing committee, to be denominated the executive and finance committee, to be composed of the president, vice-president, and four members of the board, appointed quarterly by the president, whose duty it shall be to attend to the general management of the finances and the current business of the company during the intervals between the stated meetings of the board. The said committee shall have all the powers and exercise all the functions of the board of directors, provided always that it does not transcend the specified regulations and instructions of the board previously adopted. And the said committee shall report at each stated meeting of the board a full and explicit account of its proceedings and transactions during the month, a record of which shall be kept in proper books to be provided for that purpose. Meetings shall be held twice a week, and three members of said committee shall constitute a quorum for the transaction of business.

ARTICLE X.

All books and papers of the company shall be at all times open to the inspection of the board, or any member thereof.

ARTICLE XI.

The order of proceedings at the meetings of the board shall be:

- 1st. Reading of the minutes.
- 2d. Reports of the standing committee.
- 3d. Reports of select committees.
- 4th. Miscellaneous business.

ARTICLE XII.

These by-laws may be amended at any meeting of the board, provided such amendment shall have been previously handed to the president in writing, and that a majority of all the members of the board consent thereto.

Mr. TOWNSEND. When Mr. Drake assumed the duties of first vice-president and secretary did he represent the Paris end of the matter, the same as Mr. Whaley had done before?

Mr. SIMMONS. We had no Paris end of the matter then. Mr. Whaley resigned after the property had been conveyed to the United States.

Mr. CROMWELL. He had full charge of our steamship interests in Europe, as head of the European department, adjusting tariffs with the foreign lines, collecting balances, settling controversies, advising upon practical questions of operation and policy, and giving the benefit of his great experience as a railroad manager. He is a distinguished railroad engineer and manager, having been general manager of the Western Railroad of France and a consulting engineer on many great works. He more than earned his salary.

Mr. TOWNSEND. So Mr. Drake assumed the duties of first vice-president and those he had been performing before?

Mr. SIMMONS. Yes, sir.

Mr. TOWNSEND. I show you this paper, Mr. President, and ask you if that is a correct statement of the officers connected with the Panama Railroad at Panama [handing a paper to Mr. Simmons]?

Mr. SIMMONS. To the best of my knowledge and belief, they are; yes.

Mr. DRAKE. Those are the officers?

Mr. TOWNSEND. Do you identify these [handing pamphlet to Mr. Simmons] as the by-laws and the copy of the charter?

Mr. SIMMONS. Yes, sir.

Mr. TOWNSEND. Those may be marked "Exhibit 4a" and "Exhibit 4b."

Now you stated that Mr. Shaler had resigned as general superintendent of the road at the Isthmus. When did he resign?

Mr. DRAKE. The first of February; with leave of absence to the end of the fiscal year, April 3.

Mr. TOWNSEND. Please give the cause of his resignation.

Mr. SIMMONS. One cause was the illness of his wife.

Mr. TOWNSEND. Was his resignation also voluntary?

Mr. SIMMONS. It was.

Mr. TOWNSEND. He had not been requested to resign by the company?

Mr. SIMMONS. No, sir; on the contrary, for two years his resigna-

tion had been in the hands of the officers to be accepted at any time. He was anxious to get away.

Mr. TOWNSEND. Who succeeded him as general superintendent?

Mr. SIMMONS. H. K. Prescott.

Mr. CROMWELL. He was assistant general superintendent, and became acting general superintendent.

Mr. SIMMONS. We have not filled that vacancy. He is performing the duties of general superintendent; he has not been appointed general superintendent.

Mr. TOWNSEND. Now, are you prepared to testify in regard to the financial condition of the road, Mr. Simmons?

Mr. SIMMONS. In a general way. I can not go into the details, you know.

Mr. TOWNSEND. In your report of December 31, 1903, you refer to "The sinking fund 6 per cent subsidy bond," original issue of \$3,000,000? What was the issue for; what were they issued for in the first place?

Mr. SIMMONS. That was long before I came into the company.

Mr. TOWNSEND. If you are not familiar——

Mr. CROMWELL. It is in the annual reports.

Mr. TOWNSEND. You can not tell when those bonds went out?

Mr. CROMWELL. In 1880.

Mr. TOWNSEND. Do you know what they were issued for?

Mr. SIMMONS. No; I did know, but I do not recall just now.

Mr. TOWNSEND. How much of the stock of the Panama Railroad Company is owned by parties outside of the United States?

Mr. SIMMONS. I think about a thousand shares; in that neighborhood.

Mr. TOWNSEND. Have you a record of the owners of those shares?

Mr. SIMMONS. We have a record of those who are stockholders, but it does not signify that because a man is reported here as a holder of stock that he is an owner.

Mr. TOWNSEND. And that record, to the best of your knowledge and belief, represents the holders of that stock, so far as you know?

Mr. SIMMONS. Oh, yes. Here is the list of the present stockholders [handing list to Mr. Townsend].

Mr. TOWNSEND. That is a list of what date?

Mr. CROMWELL. That is the list of the stockholders of the company as they stand to-day.

The CHAIRMAN. Have you another copy of that?

Mr. CROMWELL. That copy is for you.

Mr. TOWNSEND. I would ask you, Mr. President, to look that over and see if that is a correct list of the stockholders of the Panama Railroad Company, as shown by your books on January 31, 1905.

Mr. SIMMONS. To the best of my knowledge and belief that is a correct list.

The stock list is as follows:

EXHIBIT 5.

List of stockholders of the Panama Railroad Company.

Names.	Addresses.	Number of shares.
Brown, Vernon H	29 Broadway, New York	1
Buchanan, J. G.	27 Pine street, New York	1
Burr, William H	Isthmian Canal Commission, Washington, D. C.	1
Cromwell, Wm. Nelson	49 Wall street, New York	20
Cahen, Rudolph T., Marquis de Torre Alfina.	Care of L. von Hoffman & Co., 56 Wall street, New York.	10
Cahen, Ugo		10
Coudert, Chas (deceased)	71 Broadway, New York	1
Comstock, C. B	124 East 27th street, New York	1
Davis, Geo. W	Washington, D. C.	1
Drake, E. A.	24 State street, New York	1
de Lesser, A. L. F. B. C	Care of Mallet Freres, 37 Rue d'Anjou, Paris, France.	23
de Lesser, A. R. A. C.		23
d'Espeyran, Felix Guillaume Sabatier.		28
d'Espeyran, Mme. L. C. C. le Barrois d'Orgeval Sabatier.	7 Rond Point des Champs Elysees, Paris, France	24
Dinsmore, W. B	59 Broadway, New York	1
d'Anvers, Louisa Cahen	Care of L. von Hoffman & Co., 56 Wall street, New York.	20
d'Anvers, Louis Cahen	do	20
Einsiedler, Chas.	87 William street, New York	1
Escott, Rev. Edward Sweet; Cox, Henry Fisher.	The Red Cottage, Lyme Regis, England	37
Felton, Samuel M	Railway Exchange Building, Chicago, Ill.	1
Garr, George (deceased)	14 West 45th street, New York	1
Galloway, Robert M	42 Wall street, New York	1
Gebhard, Wm. H.	Care of C. H. Bachem, 44 Broadway, New York	10
Gordon, James R.	Care of Czarnikow, MacDougall & Co., 112 Wall street, New York.	70
Grunsky, Carl Ewald	Isthmian Canal Commission, Washington, D. C.	1
Haines, Augustus Montague	Care of Kennedy, Tod & Co., 45 Wall street, New York.	18
Harrod, Benj. M.	Washington, D. C.	1
Hecker, Frank J.	do	1
Hopkins, A. Lawrence	Williamstown, Mass	1
Hudson, Woodward	Care of Boston and Albany R. R., Boston, Mass.	5
Hurtado, Jose Marcelino	149 Via Torino, care of Hurtado & Co., Rome, Italy.	2
James, Angelina Henrietta	99 Grove Lane, Denmark Hill, London, England	59
Jennings, F. B.	15 Broad street, New York	3
Leverich, Fannie F. J.	48 Wall street, New York, care of C. D. Leverich & Bro.	18
Mackay, Mary C	Care A. K. Mackay & Co., 6 Wall street, New York.	5
Manning, Mary	Care of J. B. Manning, 2 Wall street, New York.	10
Manning, John B	2 Wall street, New York	294
Maddock, Henry	158 South Oxford street, Brooklyn, N. Y.	1
Mills, D. O.	15 Broad street, New York	1
Motley, J. M.	68 Broad street, New York	5
Montefiore, Edouard Levi	36 Avenue Henri Martin, Paris, France	18
Murray, Williams	Care of Czarnikow, MacDougall & Co., 112 Wall street, New York.	15
McCullough, John G	21 Cortlandt street, New York	3
Newton, Anna M.	Stonleigh Court, Washington, D. C.	1
Oppenheim, Ernest L.	Johnston Building, New York	32
Oppenheim, E. L., & Co.	do	129
Park, T. L.	345 Broadway, New York	3
Parker, J. H.	Cotton Exchange Building, New York	1
Parsons, Wm. Barclay	Isthmian Canal Commission, Washington, D. C.	1
Palmedo, U.	Care of L. Von Hoffman & Co., 56 Wall street, New York.	10
Pegler, Stephen Francis, and Francis Phipard, Harvey Flak	Amscott House, East Retford, England.	
Phipard, Wm. George	Care of H. F. Phipard, Singer Manufacturing Company, 149 Broadway, New York.	2
Phipard, Clarence Lester		1
Raphael, Lewis	Care of Kennedy, Todd & Co., 45 Wall street, New York.	14
Savile, John Henry, and John Mander, executors estate Anne Raphael.	do	14
Simmons, J. Edward	14 Nassau street, New York	1
Taft, Wm. H., Secretary of War	Washington, D. C.	68,887
Von Hoffman, L., & Co.	56 Wall street, New York	10
Walker, J. G., chairman Isthmian Canal Commission.	Isthmian Canal Commission, Washington, D. C.	
Whaley, George	7 Rue Louis le Grand, Paris, France	1
J. G. Walker	Isthmian Canal Commission, Washington, D. C.	1
Total		70,000

Mr. DRAKE. By the terms of the by-laws the treasurer has charge of the stock list.

Mr. CROMWELL. It is a perfect list from the records.

Mr. TOWNSEND. Have you a stock ledger which shows the transfers of your stock?

Mr. SIMMONS. Yes.

Mr. TOWNSEND. I would like to look at that, if you please.

Mr. SIMMONS. We have everything here you may want.

Mr. CROMWELL. We have the stock books for fifty years back; every transfer is there.

Mr. SIMMONS. Do you ask for the stock ledger?

Mr. TOWNSEND. Yes.

Mr. SIMMONS. I will give it to you.

Mr. DRAKE. Mr. Deming, will you show the stock ledger?

The CHAIRMAN. May I ask who is Mr. Deming?

Mr. DRAKE. Mr. Deming is the treasurer of the company. I will mention to the committee that article 4 of the by-laws provides that the treasurer shall have charge of the stock ledger.

Mr. TOWNSEND. Then Mr. Deming may be sworn.

STATEMENT OF SYLVESTER DEMING, TREASURER OF THE PANAMA RAILROAD COMPANY.

Sworn by the chairman.

Mr. TOWNSEND. What is your full name?

Mr. DEMING. Sylvester Deming. I have been treasurer of the Panama Railroad Company for eight years, and as such have charge of the stock and of the stock transfer books, which I now produce. The stock list dated January 31, 1905, is correct.

The CHAIRMAN. You mean the list heretofore presented?

Mr. DEMING. It is correct, and was prepared by me.

Mr. TOWNSEND. I will ask you, Mr. President, to turn to your stock ledger and tell me when Mr. Frank J. Hecker became a stockholder in this company.

Mr. CROMWELL. Do you not wish Mr. Deming to answer that?

Mr. TOWNSEND. If the president is not familiar.

Mr. DEMING. Frank J. Hecker had one share of stock transferred to his name October 25, 1904.

Mr. TOWNSEND. From whom was it transferred?

Mr. DEMING. I will have to go deeper into it for that, sir.

Mr. CROMWELL. Just refer to the record; I think I qualified him first out of my own shares.

Mr. DEMING. Mr. Hecker's stock was transferred to him by Mr. Cromwell on the 25th of October, 1904.

Mr. TOWNSEND. Does Mr. Hecker still own that share of stock?

Mr. DEMING. It still stands in his name; yes, sir.

Mr. TOWNSEND. Do you know whether he purchased that share of stock himself or not?

Mr. DEMING. I have no means of knowing that.

Mr. TOWNSEND. Do you know about that, Mr. President?

Mr. SIMMONS. No; I do not.

The CHAIRMAN. Mr. Cromwell knows, I think.

Mr. CROMWELL. I can tell you.

The CHAIRMAN. Can you answer, Mr. Cromwell, as to whether Mr. Hecker purchased this stock and from whom?

Mr. CROMWELL. He did not purchase it. As counsel of the company I temporarily qualified him as a director with a share of my own.

The CHAIRMAN. What do you mean by "temporarily?"

Mr. CROMWELL. I transferred it into his name so that he became the owner in law. Afterwards it was returned to me by the chairman of the Commission out of the Government's shares.

The CHAIRMAN. He is not the owner now?

Mr. CROMWELL. That one share of stock was transferred by me to Mr. Hecker, and he remained owner in law of that share. Admiral Walker later transferred one share of stock to me in reimbursement.

The CHAIRMAN. You are, in fact, the owner of that share of stock?

Mr. CROMWELL. Not of that identical share, for that remained in his name. To qualify Mr. Hecker as director, and for the convenience of the United States Government as to facilitate the affair. I transferred to Mr. Hecker one share of my stock, as I had done on other occasions for other directors, and later the Isthmian Canal Commission replaced the share which I thus had transferred to Mr. Hecker by giving me one share of their own, which share replaced the one I had transferred to Mr. Hecker.

Mr. TOWNSEND. So there was no money paid for the transfer of the share of stock which was transferred originally to Mr. Hecker?

Mr. CROMWELL. No, sir.

Mr. TOWNSEND. The Isthmian Canal Commission had the stock, and transferred one share to you in place of the one you transferred to him?

Mr. CROMWELL. Yes, sir; purely a transaction of convenience.

Mr. TOWNSEND. Was every commissioner treated in the same way?

Mr. CROMWELL. They were. I qualified each of the commissioners with my own shares. Later the Commission restored to me an equal number from the United States shares.

Mr. TOWNSEND. Did any of the commissioners own more than one share?

Mr. CROMWELL. No, sir.

Mr. DEMING. Our records show that each of the commissioners held one share; and in addition to that Admiral Walker holds, as chairman of the Commission, 94 shares of the stock.

Mr. TOWNSEND. Where did Admiral Walker get those shares?

Mr. DEMING. Purchased the stock here in New York.

Mr. TOWNSEND. Can you tell of whom?

Mr. DEMING. Of Mr. E. D. Murphy, a broker on Wall street.

Mr. DRAKE. The transfer books so show and we know it of our own knowledge.

Mr. TOWNSEND. Can you tell when he purchased those shares?

Mr. SIMMONS. We can tell when they were transferred on the books.

Mr. DEMING. They were transferred on the 21st of October, 1904, and the payment therefor was made at the same time. I know this, because the check of the assistant treasurer of the Commission passed through my hands.

Mr. TOWNSEND. So you know that was the date?

Mr. DEMING. That was the date of the payment for the stock.

Mr. TOWNSEND. The payment passed through your hands, you say? How much was it?

Mr. DEMING. Ten thousand dollars, for 100 shares at par.

Mr. TOWNSEND. That is what he paid for them?

Mr. DEMING. That was paid by the Commission.

Mr. CROMWELL. Purchased for the Commission?

Mr. SIMMONS. In the name of Admiral Walker as chairman.

Mr. DEMING. Paid by the treasurer of the Commission.

Mr. TOWNSEND. Did you say that they were transferred to Admiral Walker as chairman of the Commission?

Mr. DEMING. Yes, sir; 100 shares were transferred to the chairman of the Isthmian Canal Commission.

Mr. CROMWELL. And then six of these shares were transferred by him, one each to the other members of the Commission, and the remaining 94 shares continued in his name as chairman of the Commission. That is all there is of that. These are the 100 shares referred to in the report of Secretary Taft as having been purchased by the Government?

Mr. DRAKE. I have here on that subject a telegram from Admiral Walker to me, saying:

Will you pay \$10,000 upon delivery to you of 100 shares of Panama Railroad stock purchased by the Commission, and place same in my name. I will reimburse you as soon as proper vouchers can be prepared.

J. G. WALKER, *Chairman.*

And this is Admiral Walker's letter of October 19:

Referring to my telegram of to-day the treasurer of the Commission has not arrived at the office, and therefore I asked you if you will pay for the shares for the United States. Later the treasurer came in, and I arranged with him to make the payment.

I inclose vouchers covering this purchase, made out in the name of E. D. Murphy, 51 Wall street, who agrees to sell the stock. The vouchers must be receipted by him. If the stock is not in his name it must be transferred to him, and by him transferred to me as chairman of the Canal Commission, as the money must be paid to the actual owner of the stock.

I also inclose a check for \$10,000 on the assistant treasurer of the United States in New York, payable to Mr. Murphy's order, which you are authorized to give him in payment of the stock, conditioned as above.

I shall notify Mr. Murphy at once that you will make payment when the stock is transferred to me.

Thanking you very much for your willingness to pay the money yourself, but as it now seems unnecessary, I am taking a different course.

Very truly, yours,

J. G. WALKER,
Chairman of the Committee.

Mr. TOWNSEND. Now, Mr. Deming, I will call your attention to page 169 of your stock ledger, and ask you to read the items there in connection, first, with "J. G. Walker account, chairman of the Isthmian Canal Commission," so we may have that in the record.

Mr. DEMING. Shall I give the answer?

Mr. TOWNSEND. Yes, sir.

Mr. DEMING. The following is the transcript of the stock ledger: J. G. Walker had transferred to his name, individually, on the 13th of July, 1904, one share of stock by William Nelson Cromwell. That still stands in his name; there never has been any change in that item. J. G. Walker, as chairman of the Isthmian Canal Commission, had transferred to his name as chairman on the 20th of October, 1904, by

E. D. Murphy, 100 shares. From that stock on the 26th of October, 1904, he transferred, as chairman, 93 shares to J. G. Walker as chairman; to William Nelson Cromwell 7 shares. On the 19th December, 1904, there was transferred to J. G. Walker, chairman of the Isthmian Canal Commission, by Robert Cheesebrough, 1 share, leaving 94 shares standing in the name of Admiral Walker as chairman of the Isthmian Canal Commission.

Mr. TOWNSEND. Can you tell why he transferred seven shares to Mr. Cromwell?

Mr. DEMING. To return to him its seven shares that had been transferred by Mr. Cromwell, at various times, to members of the Commission, so that they might qualify as directors. This was the explanation given at the time, as I understand it.

Mr. TOWNSEND. Then there are 94 shares that stand at the present time in the name of Mr. Walker, chairman of the Isthmian Canal Commission?

Mr. DEMING. Yes, sir.

Mr. TOWNSEND. And each of the other commissioners hold the original one share that was transferred to him?

Mr. DEMING. Yes, sir.

Mr. CROMWELL. Seven shares plus the 94 make up the 101 shares which the United States Government has bought since the purchase from the New Panama Canal Company.

Mr. TOWNSEND. How many shares has the United States Government purchased of this railroad company's stock since the original purchase?

Mr. DEMING. One hundred and one shares; that is, they were purchased by the Isthmian Canal Commission.

Mr. TOWNSEND. And they stand in the name of the Isthmian Canal Commission?

Mr. DEMING. The chairman of the Commission.

Mr. CROMWELL. Ninety-four in the name of the chairman of the Commission, and seven in the names of the several members of the Commission?

Mr. TOWNSEND. Are those all the shares purchased for the United States Government since the original purchase?

Mr. DEMING. All of the shares that have been transferred on the books.

Mr. TOWNSEND. Now, did this company, Mr. President, declare a dividend in 1902?

Mr. SIMMONS. The records will show you.

Mr. TOWNSEND. Can not you tell?

Mr. SIMMONS. Yes, we declared a dividend in 1902.

Mr. TOWNSEND. Of how much?

Mr. SIMMONS. Four per cent.

Mr. TOWNSEND. Did you declare a dividend in 1901?

Mr. SIMMONS. Yes, a dividend of 2 per cent.

Mr. TOWNSEND. And in 1900?

Mr. SIMMONS. No.

Mr. TOWNSEND. No dividend in 1900?

Mr. SIMMONS. No.

Mr. TOWNSEND. Did you declare a dividend in 1899?

Mr. SIMMONS. I can not remember without referring to the books. The books will tell.

Mr. DEMING. Can I answer that?

Mr. TOWNSEND. Yes.

Mr. DEMING. No dividends were declared between 1893 and 1901.

Mr. ESCH. Inclusive?

Mr. SIMMONS. From 1893 to 1900, inclusive. There was a dividend in 1901.

Mr. TOWNSEND. That was a dividend of 2 per cent in that year?

Mr. DEMING. Yes, sir.

Mr. TOWNSEND. Mr. Simmons, please answer the question. There was no dividend declared from 1893 to 1900, both inclusive?

Mr. SIMMONS. No, sir.

Mr. TOWNSEND. But your next dividend was in 1901, of 2 per cent.

Mr. SIMMONS. Yes, sir.

Mr. TOWNSEND. In 1902 it was 4 per cent?

Mr. SIMMONS. Yes, sir.

Mr. TOWNSEND. What did you declare as your dividend in 1903?

Mr. SIMMONS. Eight per cent.

Mr. ESCH. 1904 is now complete. You may add that.

Mr. TOWNSEND. How many payments were made of that dividend in 1903?

Mr. SIMMONS. The books will show.

Mr. DRAKE. The books will have to be obtained. Mr. Deming, will you get the books?

Mr. DEMING. May I correct my testimony to this extent: That we paid January 3, 1893, 2 per cent. I don't know whether that was declared in 1892 or not, but it was paid in 1893, January 3.

Mr. SIMMONS. Probably declared in 1892.

Mr. DRAKE. The minutes are exact. We have everything dated, signed, and certified.

Mr. TOWNSEND. I want to know the history of your dividend in 1903, as to how it was made.

Mr. SIMMONS. Eight per cent.

Mr. DEMING. April 3, 1903, 2 per cent; October 1, 1903, 2 per cent; January 1, 1904, 4 per cent—that was declared in 1903, but the actual payment, the actual sending out of the checks, was on the 3d of January, 1904.

Mr. TOWNSEND. Will you begin with the minutes on that, as to when you first declared the first dividend of 2 per cent in 1903?

Mr. SIMMONS. We paid two each of 2 per cent, and then the one of 4 per cent, making three dividends.

Mr. DRAKE. The minute books of the meeting of March 26, 1903, shows a resolution adopted by the executive committee of the board of directors as follows:

Resolved, That the recommendation of the executive committee, adopted at the meeting of March 13, that a further dividend of 2 per cent be declared out of the net earnings of the company for the year 1902 is approved and adopted: and, further, resolved that such dividend be made payable on April 3, 1903, for stockholders of record on April 1, the date of the closing of the books for the purpose of the annual election.

Mr. TOWNSEND. So that was a dividend out of the earnings of 1902?

Mr. DEMING. Yes; so declared.

Mr. DRAKE. At a meeting of the board of directors on the 24th of September, 1903, the following action was had:

Consideration was had of the action of the executive committee at its meeting of the 22d instant, recommending that a dividend of 2 per cent on the capital stock be declared, and the motion was duly seconded, and it was unanimously resolved, that a dividend of 2 per cent on the capital stock of this company be, and the same is hereby, declared payable on October 1, 1903, to the stockholders of record on September 28. For that purpose the books were closed on September 28, and reopened on October 3.

At a meeting of the board of directors held on September 10, 1903, reference was had to the recommendations of the executive committee adopted at its meeting of the 8th instant, viz:

That a dividend of 4 per cent upon the capital stock of the company be declared, and upon motion duly seconded the following resolution was unanimously adopted:

Resolved, That a dividend of 4 per cent on the capital stock of the company is hereby declared out of the net earnings of the company, payable January 1, 1904, for stockholders of record on December 28, 1903, and that for that purpose the books of the company were closed on December 28, 1903, and reopened on January 2, 1904.

Mr. TOWNSEND. Those dividends were paid, were they, Mr. President?

Mr. SIMMONS. They were.

Mr. TOWNSEND. From what fund were they paid?

Mr. SIMMONS. From the accumulated earnings of the company.

Mr. TOWNSEND. Did you have accumulated earnings sufficient for the payment of dividends from 1894 to 1900, inclusive?

Mr. SIMMONS. Oh, yes.

Mr. TOWNSEND. What was the reason no dividends were paid during those years?

Mr. SIMMONS. Well, the principal stockholders of the company did not want any dividends, and all preferred that the net earnings should be accumulated by the company.

Mr. TOWNSEND. Then they changed that policy in 1901, and concluded to declare a dividend?

Mr. SIMMONS. Yes; we thought we had accumulated enough to declare it; more than enough to spare.

Mr. TOWNSEND. Were the dividends of 1903 paid principally from the earnings between the dividend of 1902 and the time of the first dividend in 1903?

Mr. SIMMONS. No; I think our dividends were always declared from the accumulated earnings. We had a large accumulation of earnings.

Mr. TOWNSEND. What effect did that last dividend of 4 per cent. in 1903, have upon your accumulated earnings?

Mr. SIMMONS. It decreased the accumulated earnings just so much.

Mr. TOWNSEND. Did you have any accumulated earnings left after that?

Mr. SIMMONS. A large amount.

Mr. TOWNSEND. After the last payment?

Mr. SIMMONS. Yes.

Mr. TOWNSEND. Can you tell how much?

Mr. SIMMONS. When do you want to know? What dividend do you refer to?

Mr. TOWNSEND. I am referring to the dividends of 1903. There were practically but two dividends paid in 1903.

Mr. SIMMONS. In 1903 we had an accumulation of earnings of between four and five millions of dollars, out of which we paid the dividends.

The CHAIRMAN. Let me ask a question right there on that point. You talk about accumulated earnings. You had some bonds issued by the company a long time ago to make a lump payment in lieu of the annual payments that were going to the Government of Colombia, did you not?

Mr. SIMMONS. Yes, sir.

The CHAIRMAN. Was it not a part of the provision of the issuance of those bonds to set apart a sinking fund? When you speak of accumulated earnings do you speak of that?

Mr. SIMMONS. No.

Mr. DRAKE. Those bonds represent a rental charge under the concession.

Mr. TOWNSEND. How much was that surplus?

Mr. SIMMONS. Over four million dollars.

Mr. TOWNSEND. After the last dividend of 1903 was paid?

Mr. SIMMONS. Yes.

Mr. TOWNSEND. Have you declared dividends since that time?

Mr. SIMMONS. Yes.

Mr. TOWNSEND. When?

Mr. SIMMONS. The records will show.

Mr. DEMING. I can tell when it was paid, but I don't know when it was declared. May 3, 1904, we paid a dividend of $2\frac{1}{2}$ per cent.

Mr. CROMWELL. The very last one was when?

Mr. DEMING. February 1, 1905, 5 per cent.

Mr. ESCH. In that connection what was the Government's share of the dividend?

Mr. SIMMONS. State the check that we gave.

Mr. DEMING. The check which I remitted to Mr. Taft, the Secretary of War, for dividend on 68,887 shares, was \$344,435; to J. G. Walker, as chairman of the Isthmian Canal Commission, for 94 shares, \$470, and to each member of the seven Commissioners \$5 (\$35), making \$344,940.

Mr. TOWNSEND. Do your books show the total expense for operating the New York City office for the year 1903?

Mr. SIMMONS. The books will show just what the expense was.

Mr. DRAKE. The expenses of the New York office for 1903 were \$83,607.

Mr. TOWNSEND. What items were included in that expense?

Mr. SIMMONS. Read the items.

Mr. DRAKE. All items of general expense, such as covered by book accounts, numbered from 80 to 90, inclusive. I will call them off: Account 80, advertising folders and posters; 81, general advertising; 82, salaries of clerks; 83, directors and committee's fees; 84, repairs and rent of general offices; 85, other general office expenses; 86, exchange; 87, legal services and expenses; 88, salaries of officers; 89, stationery and printing; 90, telegrams and cables.

Mr. TOWNSEND. Item No. 84, for repairs and rent of the general offices, how much was that item in the year 1903?

Mr. DRAKE. \$3,600.

Mr. TOWNSEND. You don't know about that, Mr. President?

Mr. SIMMONS. No, I do not.

Mr. TOWNSEND. Now, Mr. Drake, what was the amount of item "No. 85, other general office expenses?"

Mr. DRAKE. \$2,415.

Mr. TOWNSEND. What did that include?

The CHAIRMAN. Before you go into the books, I would like to ask two or three questions. You say in your report of 1903 by the board of directors to the stockholders, on page 17, "balance to the credit of profit-and-loss account, \$4,991,929.91." What is that item?

Mr. SIMMONS. That is accumulated earnings, profits that we had made.

The CHAIRMAN. Over and above—

Mr. SIMMONS. Over and above dividends; it is the surplus profits.

The CHAIRMAN. Over and above what you are required to set aside for a sinking fund and payment of interest?

Mr. SIMMONS. Profits above everything, subject to division among the stockholders in the shape of dividends.

Mr. CROMWELL. Accumulated mostly during the period from 1893 to 1901, when no dividends were declared?

The CHAIRMAN. There was, then, during all those years, a fund available for distribution as dividends? That is what I wanted to get at.

Mr. CROMWELL. Here is a statement prepared by the treasurer showing the gross earnings, the expenses, and the net profits for the years 1896-1904; also a statement showing balances to credit of profit-and-loss account for same period.

The CHAIRMAN. Can you give them to me?

Mr. CROMWELL. Yes, sir.

The CHAIRMAN. We will put them in as Exhibits No. 6 and 6d.

EXHIBIT 6.

Statement of gross earnings, expenditures, and net earnings.

	Gross earnings.	Expenses.	Net earnings.
1896.....	\$2,271,141.51	\$1,725,456.98	\$545,684.53
1897.....	2,300,705.25	1,890,831.88	409,873.37
1898.....	2,142,881.17	1,876,194.44	266,686.73
1899.....	2,195,041.96	1,899,810.19	295,231.77
1900.....	2,655,194.71	2,208,430.08	446,764.63
1901.....	3,196,708.97	2,937,118.85	259,590.12
1902.....	2,762,815.63	2,467,431.23	295,384.40
1903.....	2,664,051.29	2,262,982.99	401,068.30
1904 (11 months).....	2,861,353.67	2,300,037.72	561,315.95

EXHIBIT 6.

Statement showing balances to credit of profit and loss account.

Date.	Amount.	Date.	Amount.
December 31, 1896.....	\$547,465.79	December 31, 1901.....	\$4,110,345.00
December 31, 1897.....	2,713,920.70	December 31, 1902.....	4,391,567.09
December 31, 1898.....	2,971,448.51	December 31, 1903.....	4,191,929.91
December 31, 1899.....	3,390,828.94	November 30, 1904.....	4,578,245.85
December 31, 1900.....	3,867,831.69		

* Figures for 1904 are only for eleven months, and are arrived at by adding net profit for that period. It is impossible to give figures for year until completed returns come in from isthmus.

Mr. CROMWELL. It shows that although in some of those years the company did not pay dividends there were large earnings accumulated.

The CHAIRMAN. When was the last time this company has issued any bonds?

Mr. CROMWELL. The company issued its 4½ per cent mortgage bonds on August 16, 1897.

The CHAIRMAN. How many?

Mr. CROMWELL. The authorized issue was \$4,000,000.

The CHAIRMAN. How many of those in fact issued and placed? Has the company issued any bonds since that time?

Mr. CROMWELL. They were all issued under the mortgage, but the company has redeemed \$981,000 and also owns in the treasury of the company to-day \$647,000—leaving in the hands of the public only \$2,372,000.

The CHAIRMAN. How much of the proceeds arising from the sale of those bonds is involved in this balance credited to profit and loss?

Mr. CROMWELL. None whatever.

The CHAIRMAN. Can you tell at this time why it was that bonds were issued when you had an available fund like this to your credit?

Mr. CROMWELL. For this reason: There was, in 1897, an issue of bonds called the "7 per cent sterling mortgage issue," which were maturing in that year. The balance upon this issue was \$2,612,338. The new 4½ per cent first mortgage of 1897 was issued for the purpose of retiring this balance of these sterling mortgage bonds and of providing the company with sufficient moneys to complete the La Boca pier and basins, construction and reconstruction of steamships, then under way, and divers other permanent improvements. The proceeds of the new 4½ per cent first-mortgage bonds were applied toward the redemption of the sterling mortgage bonds, and the company applied out of its accumulated earnings \$705,000 cash. Thus the sterling mortgage issue was paid off.

The remainder (\$2,000,000) of these 4½ per cent first-mortgage bonds were issued under the mortgage to pay balance due for construction of the La Boca pier and basin (over \$1,000,000) and for other improvements of the company. As I have said, the company has redeemed \$981,000, and has now in its hands \$647,000, leaving in the hands of the public \$2,372,000.

The CHAIRMAN. Have there been any bonds issued since that time?

Mr. CROMWELL. There were sold out of the treasury bonds \$265,000 in October, 1904, at a premium, viz, at 104½ per cent and interest.

The CHAIRMAN. In 1904 you had some repairs made to the ships that belong to the company?

Mr. CROMWELL. The statement I have just made respecting the outstanding issue of first-mortgage bonds is of this date. We then owned \$913,000 of these bonds in the treasury of this company. These bonds were issued under the mortgage dated August 16, 1897, which provided that they should be issued for the purpose of completing terminals, buildings, buying and reconstructing ships, and all other necessary improvements. Of course none of the bonds of the company have been issued for any current operating expenses. The bonds have only been issued to retire the sterling mortgage bonds and for the construction of the La Boca pier and port, and for reconstruction of ships and other like improvements, increasing the

capital account of the company. In accordance with the purposes of the mortgage of 1897 the company undertook the reconstruction of two of its vessels. That improvement was of a permanent character, the practical reconstruction of the vessels, and amounted to about \$375,000. The improvement has been accomplished, the vessels have been reconstructed and are now in active operation, and the \$375,000 has been paid by the company.

The CHAIRMAN. Paid by the company out of what fund?

Mr. CROMWELL. From the proceeds of the \$265,000 bonds of this issue and about \$100,000 cash out of the treasury. The bonds were held in the treasury since 1897 for that very purpose.

The CHAIRMAN. In that connection, Mr. Cromwell, why was that item paid out by the sale of these bonds when there was available cash in your accumulated earnings to have done that?

Mr. CROMWELL. Because the improvement referred to was of a permanent character and related to capital account. These bonds were created for that purpose. Corporations generally have long-time bond issues to represent the permanent improvements of their property.

Mr. TOWNSEND. How do you redeem the 4½ per cent first-mortgage bonds?

Mr. CROMWELL. From our cash resources.

The CHAIRMAN. At that time there were sufficient accumulated earnings to have paid that item and left something over?

Mr. CROMWELL. Yes, sir; but the accumulated earnings of the company were represented in part by various permanent improvements, and were not all in the form of cash assets in the treasury.

The CHAIRMAN. You had accumulated earnings?

Mr. CROMWELL. Partly represented by cash in the treasury, but not entirely by cash. That, however, did not affect the status of the account itself.

The CHAIRMAN. There are \$4,191,929.91 of accumulated earnings. Was not there a sufficient amount of that available to pay for the repairs to the ships?

Mr. CROMWELL. Oh, yes; certainly.

The CHAIRMAN. That is the point.

Mr. CROMWELL. Sufficient of that amount was in point of fact physically available in cash, but not necessarily applicable to that purpose. The proper thing was to dispose of the bonds created for that purpose.

The CHAIRMAN. To go further in debt rather than use the money you had?

Mr. CROMWELL. Because the moneys in hand should first be used for the current operations of the company.

The CHAIRMAN. Were they required for that purpose?

Mr. CROMWELL. Not in the sense of being absolutely necessary to conduct the business, but were properly so applicable. If corporations took all of their net earnings to pay for reconstruction and permanent improvement of their property there never would be any distribution to stockholders.

The CHAIRMAN. You say that this item of \$4,191,929.91 of accumulated earnings was not all in cash?

Mr. CROMWELL. It was not.

The CHAIRMAN. Of what did that consist other than cash?

Mr. CROMWELL. The treasurer has made a statement which may be of use to you in explanation both of the dividends and the disposition of the surplus fund, that is, the profit and loss account.

The CHAIRMAN. Let me ask you this specific question: At the time of this last 4 per cent dividend, or at the December, 1903, directors' meeting, when they determined to pay that dividend, how much actual cash was then in this item of accumulated earnings? I want to know how much actual cash was involved in that item of accumulated earnings; in other words, I want to analyze that item.

Mr. DEMING. On December 31, 1903, the treasurer's balance sheet shows money, current assets, cash in bank, and with agents \$469,994.66.

Mr. CROMWELL. How many bonds in the treasury?

Mr. DEMING. In the treasury 6 per cent Panama Railroad Company sinking fund subsidy bonds \$153,000.

The CHAIRMAN. From what do you read?

Mr. DEMING. From the annual report, page 16; and 4½ per cent, twenty-year, gold sinking-fund bonds, \$935,000.

Mr. CROMWELL. Then you had in hand \$1,557,994 cash assets—\$469,994.66 in cash and \$1,088,000 in treasury bonds?

The CHAIRMAN. Included in these cash assets were these bonds?

Mr. CROMWELL. Yes, sir.

The CHAIRMAN. Which were really an indebtedness of the company?

Mr. CROMWELL. Not until they were sold. They would have been if sold; but in that case we would have had \$1,088,000 in cash as the proceeds thereof and with which to meet the same when they matured.

The CHAIRMAN. They never could be available for any use until they were issued, and the moment they should be issued they would become an indebtedness against the company. Therefore, to make up the account of accumulated earnings they would have to include this.

Mr. CROMWELL. No, sir; they are not a part of the accumulated earnings. The proceeds of the bonds, if sold, would have replaced the bonds sold.

The CHAIRMAN. I want to get at the items that constitute that \$4,000,000 of accumulated earnings.

Mr. DEMING. I have made a statement going back to 1896 showing the disposition of the accumulated earnings.

The CHAIRMAN. What I want to get at is to have you state what, at the time this statement was issued, were the items that went to make up this \$4,191,929.91, called the balance of "profit and loss account?"

Mr. DEMING. I present a statement showing approximately the disposition of surplus earnings over and above payment of dividends of the Panama Railroad Company included in balance to credit of profit and loss account, November 30, 1904.

The CHAIRMAN. 1904; I want the item of 1903.

Mr. CROMWELL. We will have to go back and make up one for that.

The CHAIRMAN. Well let us have this one, then.

EXHIBIT 6a.

Statement showing, approximately, the disposition of surplus earnings, over and above payment of dividends, of the Panama Railroad Company, included in balance to credit of profit and loss account, November 30, 1904.

Amount from voluntary sinking fund applied to redemption of 7 per cent general mortgage bonds held by public.....	\$705,088.34
693 7 per cent general mortgage bonds in voluntary sinking fund, canceled.....	693,000.00
Panama Railroad Company 6 per cent sinking-fund subsidy bonds in voluntary sinking fund turned into treasury.....	\$312,000.00
Less drawn for redemption.....	186,000.00
	126,000.00
Additions to property or capital expenditures since January 1, 1897, paid for out of earnings (see 6b).....	1,278,216.84
Redemption of Panama Railroad Company 4½ per cent first mortgage bonds.....	981,000.00
Panama Railroad Company's first mortgage 4½ per cent bonds in treasury paid for out of earnings.....	21,987.50
Cash on hand November 30, 1904.....	722,304.98
	4,527,597.66
Less amounts written off for worn-out equipment and adjustment of sundry accounts.....	341,283.59
Approximate increase in profit and loss balance.....	4,186,314.07
November 30, 1904. Balance to credit of profit and loss as per statement No. 1.....	4,578,245.86
Less balance December 31, 1896.....	587,465.79
	3,990,780.07

EXHIBIT 6b.

Statement showing additions to property or capital expenditures paid for out of net earnings.

1897. Installation of electric plants, providing new staterooms and other additions on steamers <i>Allianca</i> , <i>Finance</i> , and <i>Advantage</i>	\$33,513.77
1898. New floating pile driver.....	7,428.03
1901. Electric-light plant, Colon.....	10,055.19
1901. Ice-making plant, Colon.....	6,792.70
1901. Dredging attachment for floating pile driver.....	1,083.34
1901-2. New tracks, Colon yard.....	12,462.48
1901-2. Improvements to pier No. 2, Colon.....	12,313.53
1901-2. 3 new coal lighters.....	36,342.40
1897-1902. New terminal at La Boca.....	\$2,220,357.13
Less provided by disposal of bonds.....	1,087,000.00
	1,133,357.13
1902. Filling lagoon north of pier 1, Colon.....	4,100.73
1902. Tank at Pedro Miguel.....	3,141.48
1904. 2 new lighters, to November 30.....	9,901.76
1904. Duplicate ice plant to November 30.....	3,452.12
1904. New "Y" at La Boca Junction to November 30.....	2,524.27
1904. Installation of electric motor on steam cranes to November 30.....	1,747.91
Total.....	1,278,216.84

Mr. DEMING. Amount of voluntary sinking fund applied to redemption of 7 per cent mortgage bonds held by public, \$705,088.34. In other words, we reduced our mortgage indebtedness to that extent.

The CHAIRMAN. You reduced your bonded indebtedness by what method?

Mr. DEMING. By the retirement of 7 per cent sterling mortgage bonds.

The CHAIRMAN. You mean you liquidated that many bonds that were outstanding?

Mr. CROMWELL. Out of cash.

The CHAIRMAN. Then you credit that——

Mr. DEMING. I took that up as one of the amounts because we had a voluntary sinking fund derived from accumulated earnings and represented by bonds purchased therewith as investments, and that entire amount was closed into the profit and loss account in 1897, and this shows what was done with that amount.

The CHAIRMAN. Let us have your next item.

Mr. DEMING. \$693,000 7 per cent sterling mortgage bonds, which were held in the same voluntary sinking fund, and which had been purchased with earnings. These were canceled out of earnings. That is, in addition to the \$705,000. Then Panama Railroad 6 per cent sinking fund subsidy bonds held in the same voluntary sinking fund were turned into the treasury, \$312,000—being bonds purchased with earnings.

The CHAIRMAN. They were not canceled?

Mr. DEMING. No, sir; they were not canceled because they had not matured as had the sterling bonds, and therefore were turned into the treasury of the company as treasury assets.

The CHAIRMAN. Now, Mr. Cromwell, that item is included in the accumulated earnings fund. Was it the notion of the directors that that would be available to be distributed as dividends?

Mr. CROMWELL. Those bonds had been acquired with previous earnings, and in equity, as between the stockholder and the corporation, constituted a dividend fund and could have been sold, if desired, to replace the cash used for their purchase.

The CHAIRMAN. You took up previous earnings of the company and bought bonds?

Mr. CROMWELL. Yes, sir.

The CHAIRMAN. Is it then indebtedness?

Mr. DEMING. It is not indebtedness any more than the ownership of Government bonds would be an indebtedness, for these bonds were purchased with cash earnings as an investment. There was no obligation to purchase them.

The CHAIRMAN. It is a debt that the company owed.

Mr. DRAKE. These subsidy bonds so purchased were capitalization or indemnity of the subsidy under the concession from the Republic of Colombia.

The CHAIRMAN. Those bonds were bonds of the company.

Mr. CROMWELL. Yes; bonds of the company, but only payable in a specified manner and amount. They were not for money received or borrowed, and were only issued to represent the annual payment of \$225,000 payable to Colombia, as it matured each year successively.

Mr. TOWNSEND. They became an obligation of your company which eventually you have to take care of.

Mr. DEMING. Concerning the \$312,000 bonds which were turned into the treasury, there have since been \$186,000 drawn for redemption, leaving \$126,000 still in the treasury. That amount only do I now carry in as part of the accumulated earnings fund.

The CHAIRMAN. That is in the item of accumulated earnings?

Mr. CROMWELL. Not the original \$312,000, only \$126,000.

The CHAIRMAN. Now let us have the next item.

Mr. DEMING. Additions to property or capital expenditures since January 1, 1897, paid for out of earnings, \$1,278,216.84.

The CHAIRMAN. It is not necessary to go into the subschedule, Exhibit 6b. It is the general item of physical properties that have been added to the original property by the earnings of the company that goes into this item of accumulated earnings available for the payment of dividends.

Mr. CROMWELL. It is a subdivision of the Exhibit 6a statement.

The CHAIRMAN. I wanted to get at how these dividends were declared.

Mr. DEMING. The next item is redemption of Panama Railroad Company $4\frac{1}{2}$ per cent first mortgage bonds, \$981,000.

The CHAIRMAN. Were they liquidated or purchased?

Mr. DEMING. They were purchased by the trustees of the mortgage and canceled at the rate of \$140,000 a year, or about that sum. The mortgage calls for the payment by the railroad company of \$150,000 cash on the 1st of August of each year to the trustees of the mortgage for this purpose.

The CHAIRMAN. You mean that became a portion of the accumulated earnings in the treasury?

Mr. CROMWELL. Because they took cash out of the earnings and paid for and canceled \$981,000 of these bonds.

The CHAIRMAN. In that connection, what has become of that cash?

Mr. CROMWELL. It was paid to those who sold us the bonds.

The CHAIRMAN. That is not in the treasury?

Mr. CROMWELL. No, sir; the bonds themselves have been canceled, reducing the mortgage indebtedness of the company to that extent and increasing the equity in the property to that extent.

Mr. TOWNSEND. How could you use that \$981,000 in the payment of a dividend?

Mr. CROMWELL. How could we?

Mr. TOWNSEND. Yes.

The CHAIRMAN. Which consists of mere book charges.

Mr. TOWNSEND. How could that be made payable for dividend? You do not claim that you could draw on that to pay a dividend?

Mr. CROMWELL. No, sir. In fact we did not, and could not use as dividends moneys which we had already expended for redemption of these \$981,000 of bonds. The distribution of any dividend as between the stockholders and the corporation was confined to the \$4,000,000 fund. It would all have actually remained in the treasury were it not for the investments which Mr. Deming is stating. Of this, part was for redemption of the Sterling mortgage bonds; part for La Boca terminals; part for reconstruction of ships; part for other improvements set forth in the statement.

Mr. TOWNSEND. Then the answer that \$4,191,929.91 could be used for purposes of paying dividends is not exactly correct so far as that item of \$981,000 is concerned?

Mr. CROMWELL. I think it is absolutely correct. In a legal sense the fund itself exists without regard to the presence or nonpresence of the cash, and the corporation remains accountable to the stockholders for the fund.

Mr. TOWNSEND. Would you have attempted to pay dividends out of anything excepting a surplus?

Mr. CROMWELL. This is in the surplus, although in the form of property acquired or equity increased by reduction of mortgage debt. Any bookkeeper will tell us that the surplus is the net accumulated earnings of the company—no matter how it may happen to be invested or held—whether in cash, in securities, in improvements, or enhanced equity.

Mr. TOWNSEND. Over and above liabilities?

Mr. CROMWELL. Yes, sir. The fund as such exists. It may not at the moment be convenient to distribute it in cash. You might, for instance, make a stock dividend instead. You might also, instead, make a debenture dividend as is sometimes done; but the legal relations of the parties to the accumulated earnings remain unchanged by the manner of its investment. It may not be liquid, but that is of no legal consequence.

Mr. DEMING. The next items are: The Panama Railroad Company's first mortgage $4\frac{1}{2}$ per cent bonds in treasury paid for out of earnings, \$21,987.50; cash on hand November 30, 1904, \$722,304.98. These items together make a total of \$4,527,597.66. Less amount written off for worn-out equipment and adjustment of sundry accounts, \$341,283.59, leaving profit and loss balance since January 1, 1897, of \$4,186,314.07, which, without enumeration of trifling items, makes the equivalent of the \$4,191,929.91.

The CHAIRMAN. What I wanted to do was to analyze the item of the profit and loss account that you have—that four million and odd thousands of dollars.

Mr. CROMWELL. Mr. Deming has done so. Those things can only be done by close approximation on such short notice.

The CHAIRMAN. There is no means to find exactly and accurately what they are.

Mr. DRAKE. Not until the year closes.

The CHAIRMAN. At the close of the last year. Who is competent here to make up for us an analysis of that item of profits and loss for the year 1903?

Mr. CROMWELL. Mr. Deming, the same gentleman who prepared this.

The CHAIRMAN. Well, Mr. Deming, make that up and forward it to me at Washington. I will be obliged to you if you do that.

Mr. SIMMONS. We will have that done. You want an exact statement?

The CHAIRMAN. I want the treasurer, if he is the proper person to do it, to make a complete and accurate analysis of the item on page 17 of the annual report for the year 1903 of the board of directors to the stockholders. There is an item there: "Balance to the credit of profit and loss, \$4,191,991.91," and in this analysis that is to be made I would be glad to have incorporated the amounts of cash on hand at that time and the source from whence that cash has been derived.

Mr. CROMWELL. All right.

Mr. TOWNSEND. I wish, Mr. Chairman, you would add that we would like a similar statement for the same items for December 31, 1902, making up the item of \$4,201,587.09, as the balance to the credit of the profit and loss account.

Mr. CROMWELL. That can be done.

The CHAIRMAN. As soon as that is done, forward to me as chairman of the subcommittee at Washington.

Mr. SIMMONS. Would you not like, Mr. Chairman, for us to give you a little further explanation as to the various items that constitute, as he says, approximately, the amount of the \$4,000,000 fund?

The CHAIRMAN. I was going to pass to that now.

Mr. SIMMONS. That will aid you in comprehending it when you come to get the statement.

The CHAIRMAN. In an approximate way, I should like to know what this cash item of \$469,994.66 included in the current assets on page 16 of the fifty-third annual report for 1902, "Cash in banks and with agents." I would like to know where you got that cash; what did it represent?

Mr. DEMING. It represented the receipts of the company from various sources. It may have included amounts of our connecting steamship lines.

Mr. TOWNSEND. Did it?

Mr. DEMING. It undoubtedly did, because those accounts are always in process of settlement.

Mr. CROMWELL. Like bills receivable; current assets.

The CHAIRMAN. Is there anything included in this cash item to which I have referred other than the money that came to the company as its earnings as carrier for transportation of passengers and freight?

Mr. DEMING. No, sir.

The CHAIRMAN. This cash item of \$469,994.06 says, "cash in bank and with agents." Now, was any of that cash derived from any other source than the transportation of freight and passengers?

Mr. LOVERING. Was there anything from the sale of material?

The CHAIRMAN. Anything other than transportation?

Mr. DEMING. Yes, sir. We have our regular supply department on the Isthmus, you know, on the railroad, and we do buy and sell supplies—coal and material—we sell coal to the United States Government and to our connecting steamship lines at the Isthmus.

The CHAIRMAN. In addition to the carrying business you are dealers in coal and other supplies?

Mr. DEMING. To a certain extent; yes, sir.

The CHAIRMAN. So part of this cash was derived from profits on that commerce?

Mr. CROMWELL. Also amounts due from the Government. If the Government owed us \$50,000, that was as good as cash. I want that question answered, Mr. Deming.

The CHAIRMAN. I want to know if there was included in this item of cash anything other than the revenues derived from the conveying of freight and passengers and profits received from coal or other commerce you might have bought and sold.

Mr. DEMING. For freight, passengers, mails; to the best of my knowledge, that was all.

The CHAIRMAN. Does that cash represent any revenues derived

from placing any bonds of the company at any time or under any circumstances?

Mr. DEMING. We did not sell any bonds during the year 1903.

The CHAIRMAN. None of that cash was brought down from previous years?

Mr. DEMING. Certainly.

The CHAIRMAN. Was there any portion of that item of cash that had resulted from the sale of bonds of the company or any other manner of indebtedness on the part of the company?

Mr. CROMWELL. In other words, is any of that item represented by anything that the company is indebted for, directly or indirectly?

Mr. DEMING. Undoubtedly there was some of it that came from the proceeds of the sale of bonds.

The CHAIRMAN. Can you say how much?

Mr. DEMING. Without looking into it more closely I can not; but we sold 1,087 bonds—that is, \$1,087,000—of our $4\frac{1}{2}$ per cent bonds for account of the La Boca wharf; that is, to make a payment for balance of indebtedness incurred on account of the La Boca wharf. Now, there was in that sale an amount of about \$119,000 in excess of what we had to pay to the contractor.

The CHAIRMAN. Now, that is included in this item—that excess of \$119,000?

Mr. DEMING. Undoubtedly; but as we had to——

The CHAIRMAN. I don't care for the reasons; I want to know the facts. What other similar source was any of that cash derived from; what other indebtedness of the company or sale of its bonds?

Mr. DEMING. No other.

The CHAIRMAN. When was that excess of those bonds put into that account?

Mr. DEMING. I can get it in one moment.

The CHAIRMAN. I would like to know when that was credited up to the cash, that excess.

Mr. DEMING. Those bonds were sold in 1902.

The CHAIRMAN. Now, what is the exact amount of the excess, if you have it there, over and above the amount paid to the contractor?

Mr. DEMING. I should have to go to our books for that.

The CHAIRMAN. It was something over \$100,000, was it not?

Mr. DEMING. About \$119,000.

The CHAIRMAN. This excess is carried in this item of cash with agents and banks. Now, after declaring this dividend——

Mr. CROMWELL. Mr. Chairman, would you mind letting Mr. Deming complete his statement?

The CHAIRMAN. Yes.

Mr. DEMING. We had expended on new terminals at La Boca \$2,220,357.13, and we provided for a portion of it by the sale of those 1,087 bonds. That is, we provided \$1,087,000, leaving still uncapitalized an amount paid out of the accumulated earnings of \$1,133,357.13.

Mr. CROMWELL. And this \$119,000 excess proceeds of bonds is applied in reimbursing to that extent of that sum expended on the La Boca improvements of earnings. It reimbursed earnings account to extent of \$119,000.

The CHAIRMAN. The theory, as I understand it, upon which you have carried this four million fund is whenever you purchase any-

thing that becomes a material and permanent part of the road that is to be charged against the road, credited to accumulated earnings. That is the theory upon which this item has been built?

Mr. CROMWELL. That is the practice of railroads and corporations the world over. I mean to say that we are not pursuing an unusual practice; but it is the general practice in corporate accounting.

The CHAIRMAN. I want to recur to that item of improvement to those ships.

Mr. TOWNSEND. I wanted to determine that in connection with the answers that you, Mr. Deming, and Mr. Cromwell have made that that \$4,191,929.91 was available for the payment of dividends. I wanted to get at how that was possible if you are going to make a statement of the items that make up that general sum of \$4,000,000 in 1903, and also a similar item in 1902.

Mr. DEMING. Possibly, because the items that go to make up that fund extend back over a period of years. On the 1st of January, 1897—

The CHAIRMAN. That is one of the main things I want; a complete and accurate analysis of that item.

Mr. DEMING. We will give you as accurate an analysis as our books will allow us to do.

Mr. TOWNSEND. Can you tell this, Mr. Deming; how much more money available for the payment of dividends you had in the treasury at the time your last 4 per cent dividend was declared in 1903 than you had at the same date, same time of year, in 1900? Would it be possible for you to find that?

Mr. DEMING. Mere cash in hand does not represent an amount that is applicable to the payment of dividends.

Mr. TOWNSEND. As much in 1903 as in 1900?

Mr. DEMING. Yes, sir.

Mr. TOWNSEND. As much in 1900 as in 1903?

Mr. DEMING. Yes, sir.

Mr. TOWNSEND. Then you can make that comparison for us, can you not?

Mr. DEMING. I will make the attempt.

The CHAIRMAN. Do not these annual reports make that now?

Mr. CROMWELL. Yes, I think they do.

Mr. TOWNSEND. You have not changed your method of bookkeeping—you had not—at the time of the last 4 per cent dividend in 1903, from what it had been theretofore from 1893 to 1901?

Mr. DEMING. No, sir; we made a change in our method of bookkeeping in 1896.

Mr. TOWNSEND. But after that there was no change in keeping your account at all?

Mr. DEMING. None whatever.

Mr. TOWNSEND. And has not been up to date?

Mr. DEMING. No, sir.

Mr. LOVERING. Has that balance of assets been a constantly increasing one from year to year?

Mr. DEMING. Yes, sir.

Mr. TOWNSEND. Does that balance—I now refer to the item on page 17 of your report of 1903 to the stockholders—of \$4,191,929.91 represent all of the assets of the company over and above its liabilities at that time?

Mr. DEMING. Yes, sir.

Mr. TOWNSEND. Does it include any part of the ships, or all of them?

Mr. DEMING. It is over and above the ships as part of the assets.

Mr. TOWNSEND. All of them?

Mr. DEMING. Yes, sir; the three ships which the company owns.

Mr. TOWNSEND. So that there is no item that is considered as an asset, either of the ships or the railroad, that is not included in that item on the date of December 31, 1903?

Mr. CROMWELL. You do not mean included in the item of \$4,191,929.91 itself, but included in the account of which that item is the balance?

Mr. TOWNSEND. As I say, the balance over and above.

Mr. CROMWELL. All the property of the company, without exception?

Mr. DEMING. That represents the surplus.

Mr. CROMWELL. Over and above all the property, without exception?

Mr. DEMING. Of the property—we have that other property—

Mr. TOWNSEND. What other property do you refer to, Mr. Deming?

Mr. DEMING. We have our liabilities, assets and liabilities, and over and above that there is an amount of \$4,191,929.91.

Mr. TOWNSEND. That is the way I understand that; that represents the balance.

Mr. CROMWELL. That is right, sir.

The CHAIRMAN. As treasurer, you have charge of the books showing all moneys received by the company, and from whom they were received?

Mr. DEMING. Yes, sir.

The CHAIRMAN. Do the books show a payment to this company of any money by any connecting steamship lines?

Mr. DEMING. Yes, sir.

The CHAIRMAN. What lines?

Mr. DEMING. The lines which—

The CHAIRMAN. I will ask you more specifically; what lines on the Pacific side?

Mr. DEMING. The Pacific Mail Steamship Company, the Pacific Steam Navigation Company, and the South American Steamship Company.

The CHAIRMAN. Do your books show the receipt of any money by the Panama Railroad Company from any other railroad company?

Mr. DEMING. No, sir; no other railroad company.

The CHAIRMAN. No money received from any source of that sort?

Mr. DEMING. No, sir.

Mr. LOVERING. Is there any money received from any other source than in the regular course of business?

Mr. DEMING. No, sir.

Mr. LOVERING. No subsidy?

Mr. DEMING. No, sir.

Mr. TOWNSEND. Have you any contracts with any other railroad company in regard to the handling of trade?

Mr. DEMING. We have not; but I think that is a question that Mr. Cromwell or Mr. Drake could answer.

Mr. CROMWELL. The company has no contract, arrangement, understanding, division, or transaction with any other railroad company

in the world, directly or indirectly, remotely or contingently. I am glad that I could answer that myself. You know we have the contract with the Pacific Mail.

The CHAIRMAN. Have you at hand a copy of the contract that exists between the Panama Railroad Company and the Pacific Mail Steamship Company?

Mr. CROMWELL. Yes, sir; I drew it. It is in the form of two contracts. Here they are.

The CHAIRMAN. Mark these "Exhibit No. 7" and "7a."

EXHIBIT 7.

"THE PANAMA ROUTE."

CONTRACT BETWEEN THE PANAMA RAILROAD COMPANY AND THE PACIFIC MAIL STEAMSHIP COMPANY.

[Dated June 11, 1902.]

This agreement, made this eleventh day of June, 1902, in the year one thousand nine hundred and two, between the Panama Railroad Company, duly chartered and organized under the laws of the State of New York, and hereinafter called the railroad company, party of the first part, and the Pacific Mail Steamship Company, also duly chartered and organized under the laws of the said State, and hereinafter called the steamship company, party of the second part, witnesseth:

Whereas the said railroad company is now operating its railroad across the Isthmus of Panama, and running a line of steamers from New York to Colon on the Atlantic Ocean; and

Whereas the said steamship company is now running a regular line of steamers on the Pacific Ocean between San Francisco and Panama and intermediate ports on the Central American and Mexican coast; and

Whereas both companies are interested in and desirous of hereby establishing conditions under which they may carry on regularly and without interruption the business of transportation between San Francisco and New York and the said intermediate ports, with the intent hereby declared by both parties to develop to the fullest possible extent traffic by the Isthmus of Panama and to prevent the diversion of the business of said Isthmus to other routes;

Now, therefore, in consideration of these premises and with the intention of so securing to both of the parties hereto the advantages of a contract of the general character above set forth for a term of years, and in consideration of the sum of one dollar by each of the parties hereto to the other paid before the delivery hereof, it is mutually covenanted and agreed by and between the respective parties hereto, and their respective successors, assigns, and legal representatives, as follows, that is to say:

ARTICLE I.

The railroad company hereby concedes to the steamship company (so far as its charter and its contract with the Colombian Government permit) the exclusive privilege of through billing to and from any and all ports of Central America, Mexico, the United States, and British Columbia, on the Pacific Ocean, under and during the life of this contract as hereinafter provided, in connection with the railroad company and each and every one of its Atlantic connecting lines.

During the pendency of this contract the steamship company, when taking on its vessels for shipment at San Francisco or at any Pacific coast port situated between San Francisco and Panama, merchandise destined to Atlantic or Gulf ports of the United States, or to European points, shall issue its through bills on such merchandise only via the Isthmus of Panama.

At New York and San Francisco business transported, or to be transported, by the Panama route is to be delivered to and received from connecting lines, the rates on such business so delivered to or received from connecting lines to be made by adding to the charges of such connecting lines and all transfer

charges the rates prescribed under this agreement for transportation between New York and San Francisco.

And both parties agree, respectively (within the scope of their powers and as far as they can consistently with their own safety and protection and with their duties as common carriers), to cooperate with each other in making such rates and in generally taking such measures as will afford to both parties protection against interference or competition by other steamship lines with the traffic hereby conceded by each to the other.

ARTICLE II.

Section "A."—There shall be maintained by the steamship company a through line of steamers each way between Panama and San Francisco, and such intermediate ports at which the steamship company now calls, as well as any other intermediate ports on the Pacific coast as above recited whose traffic shall develop sufficiently to warrant making them ports of call. The steamship company shall, subject to the perils of the seas, make at least three trips each way per month between Panama and San Francisco, and the steamers shall be those now running on the steamship company's line between said ports, or others of approximately equal capacity and speed. In case any of the steamers engaged in the above service be lost or destroyed, the steamship company agrees to promptly replace such lost or disabled vessel or vessels by another or others of approximately equal capacity and speed, so far as necessary to maintain the service as above prescribed, namely, a through line of steamers between Panama and San Francisco and the intermediate ports as aforesaid, and the three trips each way per month as aforesaid by said present steamers or others of approximately equal capacity and speed.

Section "B."—The railroad company shall maintain a line of steamers each way between New York and Colon, and it shall, subject to the perils of the sea, make at least three trips each way per month between New York and Colon, and the steamers shall be those now running on the railroad company's line between said ports, or others of approximately equal capacity and speed. In case any of the steamers engaged in the above service be lost or destroyed, the railroad company agrees promptly to replace such lost or disabled vessel or vessels by another or others of approximately equal capacity and speed, so far as necessary to maintain the service as above prescribed, namely, a through line of steamers between New York and Colon as aforesaid, and the three trips each way per month as aforesaid by said present steamers or others of approximately equal capacity and speed.

Section "C."—These two steamship lines, connecting respectively at Panama and Colon with the Panama railroad shall constitute, with said railroad, what shall be hereafter called the "Panama Route," between New York and San Francisco.

ARTICLE III.

The intention and purpose of this agreement being to obtain for the said "Panama Route" all the freight business that can be secured at reasonable and remunerative rates, it is agreed that either party to this agreement shall, at the request of the other party thereto, publish and make operative such through rates between New York and San Francisco as will compete with those made operative by the competing transcontinental railroad lines; and failure to comply with such request within twenty days from the date of its receipt shall constitute a violation of this contract and subject the offending party to the provisions of Article XIX of this contract.

Both parties, however, agree that whenever either party without request from the other puts in operation on east or west bound traffic between San Francisco and New York, or requests the other to put in operation on such traffic, a through rate of less than forty cents (40c.) per hundred pounds or ten cents (10c.) per cubic foot, then the party so putting into effect such rate, without request from the other or the party making such request, agrees to bear itself whatever difference there may be between the minimum rate above stated and the rate so put in operation, or requested, below such minimum rate.

ARTICLE IV.

During the term of this contract the railroad company shall not, directly or indirectly, run any steamers on the Pacific north of Panama, and shall (in so far as its charter and its contract with the Colombian Government may permit,

and so far as it can consistently with its own safety and protection under existing treaty stipulations) in every manner lawfully and reasonably within its power promote and protect the interests of the steamship company in all traffic north of Panama in connection with said railroad and its Atlantic connecting lines, and especially against all forms of competition whatsoever, and will (so far as it is practicable) give, turn over to, and direct to the vessels of the steamship company, to the extent that it can lawfully control or influence the same, all business destined to Pacific points north of Panama originating on the Isthmus of Panama and carried upon its railroad or which may be brought to said Isthmus by its own ships or by other ships or lines, and especially will not, so long as the steamship company faithfully performs the stipulations of this agreement, become interested in or divide with any other person or persons or corporation or corporations the earnings of a through line or any through business to or from points on the Pacific coast north of Panama, and upon all such through business the full local tariff rates for the time being in force for transportation across the Isthmus of Panama shall be charged to all competing lines, and the railroad company will pay to the steamship company the amount of the share of the through rate to which the steamship company would have been entitled if such through business had been carried over its line.

Further, the parties hereto, each for itself, agree that all freight, passengers, baggage, specie and mail matter confided to either for transportation or brought by the one party to the other for the purpose of being conveyed in either direction over and upon the whole or any part of said Panama route shall be transported and carried promptly and without undue delay.

During the pendency of this contract the steamship company binds itself not to run vessels directly or indirectly from any port on the eastern shore of the North American Continent to Colon or to the eastern terminal of any of the transcontinental routes.

The steamship company agrees during the pendency of this contract (in so far as its charter may permit and so far as it can consistently with its own safety and protection under existing treaty stipulations) in every manner lawfully and reasonably within its power to promote and protect the interests of the railroad company in the traffic of the Panama route, and especially against all forms of competition whatsoever: the steamship company further agrees during the pendency of this contract not to divert from the Panama route the traffic to or from any of the Pacific ports between San Francisco and Panama, originating at or destined to Atlantic or Gulf ports of the United States or European ports. And for such business the steamship company shall not enter into contracts of any kind involving through billing with any person, party, or corporation other than the Panama Railroad Company, nor shall the steamship company compete directly or indirectly (by reduced rates or otherwise) with the "Panama route" on said business, and on any business so diverted directly or indirectly by it the steamship company shall pay to the railroad company the freight it would have been entitled to receive if such business had been carried across the Isthmus on its railroad.

ARTICLE V.

It is agreed that through freight rates so far as the same accrue to the railroad company and steamship company shall be divided between them as follows:

On freight between United States Atlantic coast ports and United States Pacific coast ports: to the railroad company, fifty per cent (50%); to the steamship company, fifty per cent (50%); minimum rate, forty cents (40c.) per hundred pounds or ten cents (10c.) per cubic foot.

On freight between United States Atlantic coast ports and Mexican or Central American ports: to the railroad company, sixty per cent (60%); to the steamship company, forty per cent (40%); minimum rate to or from Mexican ports, sixty cents (60c.) per hundred pounds, or thirty cents (30c.) per cubic foot ship's option; minimum rate to or from Central American ports, fifty cents (50c.) per hundred pounds, or twenty-five cents (25c.) per cubic foot ship's option.

On foreign freight between European ports and Mexican or Central American ports: To the railroad company, forty per cent (40%); to the steamship company, sixty per cent (60%); minimum rate, thirty-five shillings (35/) per ton of twenty-two hundred and forty (2,240) pounds, or forty (40) cubic feet.

On foreign freight between European ports and United States Pacific coast ports: To the railroad company, thirty-seven and one-half per cent (37½%); to the steamship company, sixty-two and one-half per cent (62½%); minimum rate, forty cents (40c.) per 100 pounds, or ten cents (10c.) per cubic foot.

The above-prescribed division between the railroad and steamship company shall apply to the portion of the through freight rates accruing to said companies on business and traffic, whether originating at or destined to the ports above mentioned or points prior or subsequent thereto.

Subject to above agreed minima, the freight rates between United States Atlantic and United States Pacific coast ports, and between United States Atlantic coast ports and Mexican or Central American ports, and between Mexican, Central American, or United States Pacific coast ports and European ports, are to be fixed by the initial carriers. All tariffs naming rates and commodities are to be made by mutual consent and become effective with the date of this agreement.

It is further agreed that if, during the pendency of this contract, it becomes necessary, on account of quarantine or revolutions, or the acts of any government, to hold and warehouse freight, mail, specie, etc., at any point on the railroad or steamship company's lines, all charges thereon are to be considered as line charges, and are to be pro rated between the lines in interest according to the divisions of the through rates, it being understood that the charges for handling and warehousing by the railroad or steamship company are to be at cost.

ARTICLE VI.

It is mutually agreed that the term "ton," as used in this agreement, shall mean two thousand two hundred and forty (2,240) pounds avdp., or forty (40) cubic feet measurement when so taken by ships, unless otherwise expressly provided herein.

ARTICLE VII.

Passenger rates accruing to the railroad and steamship company between New York and Pacific coast ports, Panama to San Francisco, both included, shall be divided as follows: To the railroad company, fifty per cent (50%); to the steamship company, fifty per cent (50%).

Through passenger rates effective under terms of this contract are those which were in effect December 1, 1899, and any change therefrom is to be made only by mutual consent in writing; but either party to this contract is at liberty to diminish any agreed rate, but at its own cost, by the amount of the proportion accruing to it under the above divisions.

Any commissions paid agents for soliciting and obtaining passenger business covering service of Panama route are to be divided between the railroad company and the steamship company pro rata, according to the divisions of the through rate.

Both parties shall have the right to appoint and maintain agents at any point they may select.

ARTICLE VIII.

The steamers of the Pacific Mail Steamship Company shall make use of the La Boca wharf provided by the Panama Railroad Company whenever in the judgment of the Pacific Mail Steamship Company it is safe and prudent so to do; but in the event of the steamers not being able to get alongside said wharf without delay, then the cargo, etc., shall be lightered in the Bay of Panama.

When steamers load or discharge alongside La Boca wharf no charge shall be made on passengers, mails, specie, baggage, etc., but the railroad company shall be paid as wharfage on all other cargo (when same is taken from or landed on the wharf direct) a maximum rate of eighty cents (80c.) American gold per ton, it being understood that the railroad company is to provide at its wharf at La Boca the necessary equipment for the efficient operation thereof and for the prompt loading and unloading by the steamship company of its vessels, compensation for all which is included in above wharfage.

If the railroad company furnishes cranes, there shall be an additional charge of ten cents (10c.) per ton on cargo for the use of such cranes, such usage, however, of cranes being optional with the steamship company.

When lighterage is performed by the railroad company and the lighters are loaded or discharged at La Boca, no charge other than the lighterage charged is

to be made the steamship company for the use of La Boca wharf or cranes, or loading or unloading the lighters at the wharf.

If the steamship company elects to enter service between Panama and Chiriquil, such service is to form part of this contract, and the steamship company is to have the right to land all cattle it may carry on the beach at Panama free of any charge.

ARTICLE IX.

The railroad company shall, during the pendency of this contract, continue to employ its lighters when reasonably necessary to connect with the steamship company's vessels and the shore at Panama, the railroad company agreeing to furnish lighters in sufficient number to load and unload such vessels with dispatch.

When lighters are used the following shall be the lighterage charges: For each ton of freight delivered by the steamship company to the railroad company, or by the railroad company to the steamship company, ninety cents (90c.) per ton United States currency; for all specie or treasure, one-fortieth of one per cent (1/40%); for each passenger one dollar (\$1.00) United States currency; no charge for extra baggage or mails.

Panama local cargo to be received and delivered by the party of the first part as agent for the party of the second part, in that city; the receipt or delivery thereof and transfer to and from steamer, including the lighterage, wharfage, and crantage, to be performed by party of the first part, and party of the second part will pay for such services rendered \$1.25 per ton, whether lightered or received from or delivered to steamers at La Boca.

ARTICLE X.

The railroad company agrees to transport from Colon to Panama supplies, excepting coal, exclusively for the use of the steamship company's steamers on the Pacific at three dollars (\$3) per ton, and to lighter same at Panama at one dollar (\$1) per ton additional, it being hereby agreed that the steamship company shall have the right to perform lighterage on its own coal and other supplies in its own lighters.

The railroad company agrees to transport by each steamer from New York to Colon, supplies exclusively for the use of the steamship company, at the rate of \$5 per ton.

ARTICLE XI.

The officers and employees of the steamship company shall be carried between Panama and Colon free, and between New York and Panama or Colon at the rate of ten dollars for each passenger.

The officers and employees of the railroad company shall be carried between Panama and San Francisco at the rate of twenty dollars for each passenger.

ARTICLE XII.

The railroad company agrees, so long as its wires are in working order, to obtain and furnish the steamship company all telegraphic and telephonic information through its agents that may be necessary to properly conduct the business of the Panama route.

ARTICLE XIII.

Each party hereto shall be responsible for cargo, specie, and mail while under its care and until delivered to its cocarrier.

Any responsibility accruing in regard to passengers or their baggage is to be assumed in like manner as cargo.

Whenever any loss or injury occurs, or damage from delay in transportation, the loss or injury or damage from delay, whether accruing with respect to cargo, specie, mail, passengers or their baggage, shall, when same can not be located, be prorated between the railroad company and the steamship company, according to the divisions of the through rate that may apply in each case.

In case any actions, suits, or claims shall be brought against any cocarrier, the carrier responsible, as above stipulated, shall bear and discharge any loss, damage, or expense incident thereto; provided the carrier sued shall at once give notice to the other cocarrier to the end that each may have opportunity to defend its interests.

ARTICLE XIV.

The carriage or transportation of salt, coal, and grain (except barley in bags between United States points) is hereby exempted from the operation of this contract, and each of the contracting parties reserves its full liberty as to the carriage or transportation of these articles.

ARTICLE XV.

The railroad company will do at its shops in Panama and Colon such work and repairs for the steamship company as the steamship company from time to time may request, and as the railroad company can perform without interference with its own business, charging therefor the cost of labor and material on the Isthmus, with ten per cent added thereto.

ARTICLE XVI.

The steamship company shall make over and deliver to the railroad company charter-parties of even date with the present instrument, at the nominal rate of one dollar per month, and unconditional in terms of the following steamers belonging to said company, and now running or to be run between Panama and San Francisco under this contract, to wit, the *Acapulco*, the *San Jose*, the *City of Sydney*, the *Colon*, the *City of Para*, and the *San Juan*, and agrees to likewise make over and deliver to the railroad company like charters of any other steamers placed upon said service under the provisions of Section A, of Article II of this contract, simultaneously with the placing of the same upon said service.

If the steamship company, from any cause except the act of God or the public punctually and regularly three trips per month in each direction under and according to the provisions of Section A, Article II of this contract, then these charters are to remain unenforceable.

If the steamship company, from any cause except the act of God, or the public enemy, or arising from the perils of the sea, omits two sailings in any one calendar month during the continuance of this contract, then the above charters are, as to all or any one or more of said steamers, at the railroad company's option, to become enforceable, and the railroad company shall have, and is hereby given, the absolute right and power to run said vessels, or any of them, on the aforesaid described route and service, calling at all ports between Panama and San Francisco, and vice versa, for the account and risk of and at the expense of said steamship company, during the unexpired portion of this contract, it being the express intent and agreement of the parties hereto that the covenants of this article shall be specifically enforceable, and that breach thereof can not be adequately compensated in damages.

The steamship company agrees, in the contingency aforesaid, peacefully to surrender to the railroad company, upon its demand in writing, the said steamers, or any of them, without the intervention of any court or legal proceedings of any kind whatsoever; the steamship company hereby irrevocably giving the railroad company all the power and authority needful in the premises, in order that the railroad company may take possession of said steamers, or of any one or more of them, and operate them, or any one or more of them, under the provisions and terms of the charter-parties hereto annexed; and it is expressly agreed that in case of any conflict of opinion or doubt as to the respective rights of the parties hereto under this clause, until such rights are finally established by the judgment and decree of a competent court, or by arbitration in the manner hereinafter provided, the steamship company or its successors will not, in the contingency herein contemplated, hold said ships as against any demand of said railroad company, and will not prevent or hinder the use of the same by the railroad company in the manner or in the business contemplated by this agreement.

ARTICLE XVII.

The railroad company shall make over and deliver to the steamship company charter-parties of even date with the present instrument, at the nominal rate of one dollar per month and unconditional in terms, of the following steamers belonging to said railroad company and now running, or to be run, between New York and Colon under this contract, to wit, the *Alliance*, the *Advance*, and the *Finance*, and agrees to likewise make over and deliver to the steamship com-

pany like charters of any other steamers placed upon said service under the provisions of Section B, of Article II of this contract, simultaneously with the placing of the same upon said service.

It is hereby further agreed that as long as the railroad company's steamship line performs punctually and regularly at least three trips per month in each direction, under and according to the provisions of Section B, of Article II of this contract, then these charters are to remain unenforceable.

If the railroad company, from any cause except the act of God or the public enemy, or arising from the perils of the sea, omits two sailings in any one calendar month during the continuance of this contract, then the above charters are, as to all or any one or more of said steamers, at the steamship company's option to become enforceable, and the steamship company shall have, and is hereby given, the absolute right and power to run said vessels, or any of them, on the aforesaid described route and service, between New York and Colon, and vice versa, for the account and risk of and at the expense of said railroad company, during the unexpired portion of this contract, it being the express intent and agreement of the parties hereto that the covenants of this article shall be specifically enforceable, and that breach thereof can not be adequately compensated in damages.

The railroad company agrees, in the contingency aforesaid, peacefully to surrender to the steamship company, upon its demand in writing, the said steamers, or any of them, without the intervention of any court or legal proceedings of any kind whatsoever; the railroad company hereby irrevocably giving the steamship company all the power and authority needful in the premises, in order that the steamship company may take possession of said steamers, or of any one or more of them, and operate them, or any one or more of them, under the provisions and terms of the charter-parties hereto annexed; and it is expressly agreed that in case of any conflict of opinion or doubt as to the respective rights of the parties hereto under this clause, until such rights are finally established by the judgment and decree of a competent court, or by arbitration in the manner hereinafter provided, the railroad company, or its successors, will not, in the contingency herein contemplated, hold said ships as against any demand of said steamship company, and will not prevent or hinder the use of the same by the steamship company in the manner or in the business contemplated by this agreement.

ARTICLE XVIII.

For all joint business transacted under this contract and for all services or material furnished by the parties thereto to each other there shall, except as herein otherwise expressly provided for, be rendered at New York a monthly account, on the 25th day of each month, for the business of the preceding month, such statement to cover all business of the preceding month cleared during said month, and the sums due shall be paid on that date to the creditor company.

ARTICLE XIX.

Any and all questions that shall or may arise touching this agreement, or the construction thereof, or any matters or things to be done or performed by either of the parties hereunder, shall be submitted to the decision and award of three arbitrators, who shall be disinterested persons, and who shall be chosen, one by each of the parties hereto, and the third by the two so chosen. Either party hereto may, at any time, notify the other, in writing, that it elects to submit any such matter of difference to arbitration hereunder and name an arbitrator, and if the other party shall fail or omit to name an arbitrator within fifteen days after written notice of such selection of an arbitrator by the other party and written request to name an arbitrator, the arbitrator named by the party giving such notice shall name an arbitrator for and on behalf of the party so failing or omitting, who shall have the same power and authority as though he had been chosen and nominated by such party. And the decision and award of any two of such arbitrators with respect to the matters so submitted to them shall be binding and conclusive upon the parties; and each of the parties hereto does bind itself and its successors faithfully to abide by and carry out any award so made by any two of the arbitrators appointed as aforesaid. Any question of violation or failure to observe this agreement by either party, or any other question arising between them hereunder, may be submitted to such arbitrators, and they shall determine, first, as to the fact, and, secondly, as to the amount of money

damages to be paid by the party found guilty to the party making the charge, or the particular thing to be done or to be refrained from being done by such guilty party, and such amount shall be paid, and such award shall be complied with, within ten days of the rendering of such award. The two parties both agree to furnish to the arbitrators any paper, instrument, or book in their possession which such arbitrators may request them to produce. Should any arbitration fail for any cause, then such proceedings as above prescribed may be taken de novo by either party to this agreement. All hearings by said arbitrators shall be held in New York or on the Isthmus of Panama, or in San Francisco, or such other place where witnesses necessary to appear before the arbitrators may be obtained with the least expense to the parties to this contract, and all fees and expenses of such arbitrators shall be borne by the party against whom the award of the arbitrators shall be made, and shall be assessed by said arbitrators and made part of their award.

This article shall be considered of the essence of this agreement and any breach of or failure to observe any of the terms thereof shall be deemed to be a material breach of the entire contract.

ARTICLE XX.

Any of the conditions of Articles V, VII, VIII, IX, X, and XI of this agreement may be altered by consent in writing of the parties hereto, signed by their respective presidents or vice-presidents, without affecting any of the other conditions of this agreement.

ARTICLE XXI.

Subject to the provisions of a contemporaneous agreement between the parties hereto of even date herewith this contract, except as herein otherwise expressly prescribed, shall remain in force for three years from the eleventh day of June, 1902, and for the further period of two years, if either party shall so elect, and if such party shall have given notice of such election to the other party hereto at least ninety (90) days before the expiration of the first term of three years.

In witness whereof the said parties hereto have caused this instrument to be signed in their corporate names by their respective presidents, and their respective corporate seals to be hereunto affixed and attested by their respective secretaries the day and year first herein above written.

PANAMA RAILROAD COMPANY,
By J. EDWARD SIMMONS, *President*.

Attest:

E. A. DRAKE, *Secretary*.

PACIFIC MAIL STEAMSHIP COMPANY,
By CHARLES H. TWEED, *President*.

Attest:

JOS. HELLEN, *Secretary*.

STATE OF NEW YORK, *County of New York*, ss:

On this 11th day of June, 1902, before me personally appeared J. Edward Simmons, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Panama Railroad Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the president of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said corporation by authority of its board of directors; and the said J. Edward Simmons acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[Notarial seal.]

JOHN J. TIERNEY,
Notary Public, Kings County.
Certificate filed in New York County, N. Y.

STATE OF NEW YORK, *County of New York*, ss:

On this 11th day of June, 1902, before me personally appeared E. A. Drake, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Panama Railroad Company, who, being by me duly

sworn, did depose and say: That he resided in New York City; that he was the secretary of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said corporation by authority of its board of directors; and the said E. A. Drake acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[Notarial seal.]

JOHN J. TIERNEY,
Notary Public, Kings County.
Certificate filed in New York County, N. Y.

STATE OF NEW YORK,

County of New York, ss:

On this 11th day of June, 1902, before me personally appeared C. H. Tweed, personally known to me to be the individual who subscribed the within instrument, for and in behalf of the Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the president of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said corporation by authority of its board of directors; and the said C. H. Tweed acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[Notarial seal.]

JOHN J. TIERNEY,
Notary Public, Kings County.

Certificate filed in New York County, N. Y.

STATE OF NEW YORK,

County of New York, ss:

On this 11th day of June, 1902, before me personally appeared Joseph Hellen, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the secretary of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said corporation by authority of its board of directors; and the said Joseph Hellen acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[Notarial seal.]

JOHN J. TIERNEY,
Notary Public, Kings County.

Certificate filed in New York County, N. Y.

[Extract from minutes of regular meeting of the board of directors of the Panama Railroad Co., held at the office of the company, No. 24 State street, New York, on Thursday, June 12th, 1902]

Resolved. That the contract and supplemental agreement between the Pacific Mail S. S. Co. and this company, which have been approved by counsel and now submitted to this board, be, and the same are hereby, ratified, approved, and adopted, said agreements being as follows:

* * * * *

And the president and secretary of this company are hereby fully authorized and empowered to execute, acknowledge, and deliver for and in behalf of this company, and under its corporate seal, the agreements aforesaid, together with the several charter parties and stipulations provided by said agreements to be made and delivered at this time or any time hereafter by this company, said charter parties and stipulations to be in such form and terms as to the executive committee may seem proper in order to carry out said agreements; and said officers are also fully authorized and empowered to do all acts and things which they may deem necessary or proper to effectuate the completion of said agreements and the full establishment of the same.

I hereby certify the foregoing to be a true and correct copy of the resolution adopted by the board of directors at its meeting held on June 12th, 1902, duly called and held.

Witness my hand and official seal this 12th day of June, 1902.

[Seal of Panama Railroad Co.]

E. A. DRAKE, *Secretary*.

[Extract from the minutes of a special meeting of the board of directors of the Pacific Mail Steamship Co., held at No. 120 Broadway, in the city of New York, on Wednesday, June 11th, 1902, at 3 o'clock p. m. A quorum being present and assenting.]

Resolved, That the agreement and the supplemental agreement between the Panama Railroad Company and this company, which are now submitted to the board, be, and the same are hereby, approved, and that the president and secretary of this company be, and they are hereby, authorized to execute said agreement and supplemental agreement under the corporate seal of this company, and to acknowledge and deliver the same, and to execute, acknowledge, and deliver charter parties as prescribed in said agreement, and to do such other acts and things as they may deem necessary and proper to carry out said agreement and supplemental agreement.

Attest:

A true copy.

[Seal of Pacific Mail Steamship Co.]

JOS. HELLEN, *Secretary*.

EXHIBIT 7a.

"THE PANAMA ROUTE."

SUPPLEMENTAL CONTRACT BETWEEN THE PANAMA RAILROAD COMPANY AND THE PACIFIC MAIL STEAMSHIP COMPANY.

[Dated June 11, 1902.]

This memorandum of an agreement, made and entered into this eleventh day of June, 1902, by and between the Panama Railroad Company, a corporation duly chartered by and organized under the laws of the State of New York, and hereinafter called the railroad company, party of the first part, and the Pacific Mail Steamship Company, also a corporation duly chartered by and organized under the laws of said State, and hereinafter called the steamship company, party of the second part, witnesseth, that

Whereas the parties hereto have entered into another agreement, bearing even date herewith, for the purpose of regulating the traffic arrangements between them and hereinafter called the traffic agreement; and

Whereas a suit is now pending before the supreme court of the Republic of Colombia, brought by the attorney-general of said Republic against the railroad company, to compel the railroad company to grant to all carriers the privilege of issuing through bills of lading over its line of railroad and to forbid it to give to any carrier special privileges or advantages in respect of transportation of goods over said railroad; and

Whereas carriers of goods and passengers from Panama to points upon the Pacific, north of said city, may enter into competition with the Panama route and may embarrass the operations of said route, and it may be necessary for the proper conduct of the business that other independent means of transportation from Panama to points on the Pacific, south of said city, should be provided:

Now, therefore, in consideration of the premises and of the sum of one dollar by each of the parties hereto to the other in hand paid, and of other good and valuable considerations, the receipt whereof is hereby acknowledged, and of the making of said traffic agreement and of the various covenants of the respective parties hereinafter contained, the parties aforesaid have covenanted and agreed, and do hereby covenant and agree, to and with each other as follows:

First. The railroad company and the steamship company will cooperate in defending, or procuring the dismissal of the said suit now pending before the supreme court of the Republic of Colombia, and will contribute in the proportion of 55 per cent by the railroad company and 45 per cent by the steamship company to the expenses hereafter and during the operation of said traffic agree-

ment, incurred for counsel in connection with the defense of said suit, or with such efforts to procure the dismissal thereof.

Second. If the railroad company should not, on account of its inability to do so, or for any other reason, give to the steamship company the exclusive privilege of issuing through bills of lading over its line of railroad, to and from the ports referred to in the first paragraph of Article I of said traffic agreement, in connection with the railroad company and each and every one of its Atlantic connecting lines, then the steamship company shall be entitled, at its option, to terminate said traffic agreement upon giving written notice to the railroad company of its election so to terminate the same.

Third. Upon the execution of the said traffic agreement by the parties hereto the railroad company is to forthwith give notice to all steamship lines running steamers between Panama and ports on the Pacific coast north thereof, other than the Pacific Mail Steamship Company, that upon the expiration of ninety days from the giving of such notice the railroad company will cease to through-bill with the steamship lines so notified, or either or any of them, in respect of the transportation of merchandise on the Pacific coast north of Panama, and the parties hereto shall endeavor to procure arrangements between such other steamship lines so notified and the parties hereto for a division of territory under which the transportation of merchandise on the Pacific coast north of Panama shall be conducted by the Pacific Mail Steamship Company only, and the transportation of merchandise on the Pacific coast south of Panama shall be conducted by such other lines and for a mutual interchange of business at Panama between said Pacific Mail Steamship Company and such other steamship lines.

If on or before the expiration of ninety days from the giving of such notice such other steamship lines shall not have agreed to such division of territory and to such mutual interchange of business at Panama as above prescribed, but shall conduct the transportation of merchandise north of Panama, the Pacific Mail Steamship Company may, at its own expense, but otherwise in cooperation with the Panama Railroad Company, inaugurate a steamship line extending as far south as Valparaiso, and the Panama Railroad Company will extend to the Pacific Mail Steamship Company, in respect of such line, facilities in all respects equal to those which the railroad company may accord to any other line operating steamers south of Panama.

If, in consequence of the notification to be given as above prescribed from the railroad company to the other steamship lines, or such efforts to secure a division of territory as above provided, such other steamship lines shall withdraw their existing lines connecting Panama with points on the Pacific coast south thereof, then the Pacific Mail Steamship Company will, if the railroad company shall so request, forthwith make arrangements for providing for a line of steamers running south from Panama as far as Valparaiso, and shall within at most 120 days after the making of such request establish and begin the actual operation of such line; and in that event the railroad company will thereafter and so long as such line shall be maintained and operated in a regular and efficient manner so as to accommodate properly the traffic between said points and Panama in connection with the railroad, refuse and continue to refuse to through-bill with other steamship lines in respect of business south of Panama, and will through-bill exclusively with the Pacific Mail Steamship Company for such business, and will extend to the Pacific Mail Steamship Company facilities for such business in all respects equal to those which by the said traffic agreement are extended to the business conducted by the Pacific Mail Steamship Company north of Panama. Provided, however, that the running of such line of steamers south from Panama by the Pacific Mail Steamship Company and such exclusive through-billing privilege may be terminated upon one year's notice from the Pacific Mail Steamship Company to the Panama Railroad Company of its election to terminate the running of such line, or upon one year's notice from the Panama Railroad Company to the Pacific Mail Steamship Company of its election to terminate such exclusive through-billing privileges.

Fourth. It is mutually and expressly understood and agreed that if at any time during the continuance of said traffic agreement, a majority of the shares of the railroad company or its railroad property shall be purchased or acquired by the United States of America, or by any person or persons representing it or acting in its behalf, then either party hereto may give notice in writing to the other of its intention to terminate said traffic agreement, and at the expiration of six months from the giving of such notice, the said traffic agreement and the previous articles of this agreement shall terminate, come to an end, and

be utterly null and void thenceforth, anything in said traffic agreement or herein contained to the contrary notwithstanding.

In witness whereof each of the parties hereto has caused these presents to be signed by its president, attested by its secretary, and sealed with its corporate seal, the day and year first hereinabove written.

PANAMA RAIL ROAD COMPANY,
By J. EDWARD SIMMONS, *President*.

Attest:

E. A. DRAKE, *Secretary*.

PACIFIC MAIL STEAMSHIP COMPANY,
By CHARLES H. TWEED, *President*.

Attest:

JOS. HELLEN, *Secretary*.

STATE OF NEW YORK.

County of New York, ss:

On this 11th day of June, 1902, before me personally appeared J. Edward Simmons, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Panama Railroad Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the president of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said corporation by authority of its board of directors; and the said J. Edward Simmons acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[Notarial seal.]

JOHN J. TIERNEY,
Notary Public, Kings Co.,
Certificate filed in New York County, N. Y.

STATE OF NEW YORK.

County of New York, ss:

On this 11th day of June, 1902, before me personally appeared E. A. Drake, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Panama Railroad Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the secretary of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said corporation by authority of its board of directors; and the said E. A. Drake acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[Notarial seal.]

JOHN J. TIERNEY,
Notary Public, Kings Co.,
Certificate filed in New York County, N. Y.

STATE OF NEW YORK.

County of New York, ss:

On this 11th day of June, 1902, before me personally appeared C. H. Tweed, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the president of said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said corporation by authority of its board of directors; and the said C. H. Tweed acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[Notarial seal.]

JOHN J. TIERNEY,
Notary Public, Kings Co.
Certificate filed in New York County, N. Y.

STATE OF NEW YORK,

County of New York, ss:

On this 11th day of June, 1902, before me personally appeared Joseph Hellen, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the secretary of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said corporation by authority of its board of directors; and the said Joseph Hellen acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[Notarial seal.]

JOHN J. TIERNEY,

Notary Public, Kings Co.

Certificate filed in New York County, N. Y.

[Extracts from minutes of regular meeting of the board of directors of the Panama Railroad Co., held at the office of the company, No. 24 State street, New York, on Thursday, June 12th, 1902.]

Resolved. That the contract and supplemental agreement between the Pacific Mail S. S. Co. and this company, which have been approved by counsel and now submitted to this board, be, and the same are hereby, ratified, approved, and adopted, said agreements being as follows:

* * * * *

And the president and secretary of this company are hereby fully authorized and empowered to execute, acknowledge, and deliver, for and in behalf of this company, and under its corporate seal, the agreements aforesaid, together with the several charter parties and stipulations provided by said agreements to be made and delivered at this time or any time hereafter by this company; said charter parties and stipulations to be in such form and terms as to the executive committee may seem proper, in order to carry out said agreements; and said officers are also fully authorized and empowered to do all acts and things which they may deem necessary or proper to effectuate the completion of said agreements and the full establishment of the same.

I hereby certify the foregoing to be a true and correct copy of the resolution adopted by the board of directors at its meeting held on June 12th, 1902, duly called and held.

Witness my hand and official seal this 12th day of June, 1902.

[Seal of Panama Railroad Co.]

E. A. DRAKE, *Secretary.*

[Extract from the minutes of a special meeting of the board of directors of the Pacific Mail Steamship Co., held at No. 120 Broadway, in the city of New York, on Wednesday, June 11, 1902, at 3 o'clock p. m. A quorum being present and assenting.]

Resolved. That the agreement and the supplemental agreement between the Panama Railroad Company and this company, which are now submitted to the board, be and the same are hereby approved, and that the president and secretary of this company be and they are hereby authorized to execute said agreement and supplemental agreement under the corporate seal of this company, and to acknowledge and deliver the same, and to execute, acknowledge, and deliver charter parties as prescribed in said agreement, and to do such other acts and things as they may deem necessary and proper to carry out said agreement and supplemental agreement.

Attest:

A true copy.

[Seal of Pacific Mail Steamship Co.]

JOS. HELLEN, *Secretary.*

Mr. CROMWELL. It is a profitable contract to this company.

Mr. ESCH. In that connection, have you contracts with the South American Steamship Company?

Mr. CROMWELL. We have contracts, but not of such a permanent character. They are terminable on short notice. They are current business contracts.

The CHAIRMAN. I would be glad if you would explain some of

the environment of the Pacific mail contract. The contract is between the Panama Railroad Company and the Pacific Mail Steamship Company; is that it? They are the parties to the contract?

Mr. CROMWELL. Yes, sir.

The CHAIRMAN. Is the Pacific Mail Steamship Company a part of any railroad company or owned by any railroad company?

Mr. CROMWELL. We have no direct knowledge on that subject, Mr. Chairman. It is a matter of general information, however, that the majority of the stock of the Pacific Mail Steamship Company is held by the Union Pacific. It was formerly held by the Southern Pacific, but is now controlled by the Union Pacific Railroad Company.

The CHAIRMAN. Who, in this city, represents the Union Pacific Railroad Company?

Mr. CROMWELL. The president of that corporation, Mr. Harriman.

The CHAIRMAN. You say, then, that the Panama Railroad Company has no relationship with any transcontinental railway?

Mr. CROMWELL. None; on the contrary, we actively compete with them. In former years such a relation did exist, Mr. Chairman, but for a number of years no relation has existed with a transcontinental railroad. In 1893 we broke with them absolutely and have fought them ever since.

The CHAIRMAN. When did that cease?

Mr. CROMWELL. In 1893.

Mr. SIMMONS. We then began to operate our own lines on the Atlantic and on the Pacific.

The CHAIRMAN. In 1893 the relationship that had existed between the Panama Railroad Company and other railroad companies ceased?

Mr. CROMWELL. It did, and never has been resumed.

The CHAIRMAN. You did have a contract with the Pacific Mail Steamship Company?

Mr. CROMWELL. Yes, sir.

The CHAIRMAN. Did that give any exclusive privileges on the Pacific side?

Mr. CROMWELL. It did.

The CHAIRMAN. Between what points?

Mr. CROMWELL. Panama and San Francisco.

The CHAIRMAN. Did it include points on the South American coast?

Mr. CROMWELL. Not below Panama.

The CHAIRMAN. In a general way how have rates compared between New York and Panama and New York and San Francisco?

Mr. CROMWELL. They have been lower under the new arrangement.

The CHAIRMAN. How much difference was there between the rate from New York to Panama and from Panama to San Francisco?

Mr. CROMWELL. I can not give you the exact rate.

The CHAIRMAN. You are not prepared to answer that question?

Mr. CROMWELL. I can answer in a general way.

The CHAIRMAN. How do those rates compare, in a general way?

Mr. CROMWELL. They are lower than they were.

The CHAIRMAN. What is the basis of making that rate—your basic point?

Mr. CROMWELL. Our basic point is to make a rate that will take the business away from the transcontinental railroads, and we have to make a rate somewhat lower—from 20 to 30 per cent.

The CHAIRMAN. Of the rates from New York to Panama, or New York to San Francisco, which is the lower rate?

Mr. CROMWELL. There is really no comparison between the two.

The CHAIRMAN. Have you any exclusive contract between the Panama Railroad Company and any other Pacific side steamship company to other points than San Francisco?

Mr. CROMWELL. The only exclusive contracts we have is with the Pacific Mail Steamship Company, and notice of the termination of that contract has been given. That contract will thus expire in July of this year.

The CHAIRMAN. Given by the Commissioners?

Mr. CROMWELL. No; the notice was given by this corporation. The contract with the Pacific Mail contains a provision as follows:

Fourth. It is mutually and expressly understood and agreed that if at any time during the continuance of said traffic agreement a majority of the shares of the railroad company or its railroad property shall be purchased or acquired by the United States of America, or by any person or persons representing it or acting in its behalf, then either party hereto may give notices in writing to the other of its intention to terminate said traffic agreement, and at the expiration of six months from the giving of such notice the said traffic agreement and the previous articles of this agreement shall terminate, come to an end, and be utterly null and void henceforth, anything in said traffic agreement or herein contained to the contrary notwithstanding.

The CHAIRMAN. Under that clause this notice was given?

Mr. CROMWELL. Yes, sir. Upon the request of the majority of the stockholders of this company the board of directors exercised the reserve right under that contract, and gave notice of the termination. That notice has been given in writing, and the six-month period is now running.

Mr. TOWNSEND. Now, Mr. Cromwell, a long time ago you had some arrangement, or the road had some arrangement, with transcontinental roads. Do you know when that terminated?

Mr. CROMWELL. In 1893 it had the arrangement, to which I have already referred, with the Pacific Mail Steamship Company, which itself had contract with the transcontinental lines.

Mr. TOWNSEND. What was the arrangement before that?

Mr. CROMWELL. It was in substance a guarantee by the Pacific Mail to the Panama Railroad Company of a fixed sum per month to cover the use of a fixed space (a rental-space contract), by which the Pacific Mail agreed to pay for a certain space in each ship on the tonnage of each ship whether they filled it or not.

Mr. TOWNSEND. You had that arrangement simply with——

Mr. CROMWELL. With the Pacific Mail Steamship Company.

Mr. TOWNSEND. Why did you terminate that contract in 1893?

Mr. CROMWELL. It expired by limitation.

Mr. TOWNSEND. You never have renewed it?

Mr. CROMWELL. It expired by limitation in 1893, and we did not renew it.

Mr. CROMWELL. The contract was originally made in 1878, and was existing when present board of directors came into office. It ran until 1893, when it expired by limitation, and this company did not renew it, but entered into other arrangements. Since that time (1893) this

company has had no division of rates or relation with any other railroad company or any other railroad connection.

Thereupon, at 12:40 o'clock p. m., the committee adjourned to meet again at 1:45 p. m.

AFTERNOON SESSION.

Committee called to order at 1:45 p. m.

The same members present as at the morning session.

Mr. TOWNSEND. Now, Mr. Cromwell, you were active in assisting in the transfer of the canal company property to the United States, were you not?

Mr. CROMWELL. Yes, sir. I consummated the transfer as general counsel of the canal company.

Mr. TOWNSEND. At that time was the United States furnished with an itemized list of the property that was purchased by it?

Mr. CROMWELL. It was furnished with a schedule of all the personal property of the canal company on the Isthmus of Panama, numbering about 15,000 items.

Mr. TOWNSEND. Filed with the War Department, I suppose?

Mr. CROMWELL. That was filed with the Secretary of State.

Mr. TOWNSEND. When was that, do you remember?

Mr. CROMWELL. That was in the spring of 1902.

Mr. TOWNSEND. When did you commence your negotiations with the United States for the sale of the railroad; about when?

Mr. CROMWELL. There never was any negotiation for the sale of the Panama Railroad by itself. The transaction which is known as the sale from the New Panama Canal Company to the United States comprised the Panama Canal concession, the partly constructed canal, the plant, machinery, real estate, and divers personal property of the New Panama Canal Company, together with 68,887 shares of the capital stock of the Panama Railroad Company.

Mr. TOWNSEND. All of the shares they held?

Mr. CROMWELL. All the shares they then held.

Mr. TOWNSEND. That is all the United States holds now excepting the 101?

Mr. CROMWELL. Not quite that. When the negotiations began the Panama Canal Company did not own quite as many shares as they subsequently gave to the Government. The transaction with the Government was based upon a smaller number of shares—about 350. The canal company had acquired a few other shares by purchase, and the company and myself considered it liberal to give those to the United States in addition to the amount which the canal company originally acquired. These additional shares were also delivered to the United States on the final transfer, and are included in the 68,887.

Mr. TOWNSEND. Did you have negotiations with Mr. Walker and other members of the Commission for the purchase of this property?

Mr. CROMWELL. Strictly speaking, the negotiations were under the direction of the President of the United States himself.

Mr. TOWNSEND. That was carried on, to some extent, through the Commission, was it not?

Mr. CROMWELL. The Commission obtained very valuable data, and the offer of the canal company was addressed to them, but action thereon, of course, rested with the President.

Mr. TOWNSEND. This inventory of stock was made in the spring of 1902. When was the transfer made, at what time?

Mr. CROMWELL. Concluded May 7, 1904.

Mr. TOWNSEND. What was done between the filing of the inventory in the spring of 1902 and the transfer of property in 1904 relative to these negotiations?

Mr. CROMWELL. How much do you want me to state?

Mr. TOWNSEND. What remained to be done after the inventory was filed in 1902 to complete the transfer?

Mr. CROMWELL. Everything. The United States had not accepted the proposal of the canal company in 1902.

Mr. TOWNSEND. When did they accept?

Mr. CROMWELL. You will recall that the President himself had not been authorized by Congress to deal with the question until the Spooner law of June 28, 1902. You will remember, also, that that law made the choice of the Panama route and purchase of Panama Canal subject to the negotiation and ratification of a treaty with Colombia. A treaty was first made with Colombia, but was not ratified by that country. Subsequent to the independence of Panama a treaty was made with that nation, but not exchanged until February 26, 1904. You will remember, also, that the law of June 28, 1902, further provided that the choice of the Panama route and the purchase of Panama Canal should not be consummated unless the titles were first approved by the President, and that took a year or so more of examination, etc.

Mr. TOWNSEND. So that the canal company did not feel that it was obligated to make these transfers to the United States until it was actually consummated?

Mr. CROMWELL. No, sir; that is right, and until it was paid for. Just as the United States did not consider that it was obligated to pay interest on the 40 millions pending the conclusion. Interest on \$40,000,000 from January 11, 1902, to April 1, 1904, would have amounted to over \$3,300,000, even at a rate as low as 4 per cent.

Mr. TOWNSEND. There was something left to be done?

Mr. CROMWELL. And the actual fact is that it was not paid for until two months after the property was completely delivered on May 7, 1904, but that delay was agreed to by us.

Mr. TOWNSEND. Did you file any subsequent statement or inventory with the Government after the one of the spring of 1902?

Mr. CROMWELL. No, sir.

Mr. TOWNSEND. Did you make a detailed statement to them as to the condition of the property?

Mr. CROMWELL. No other was asked for or given.

Mr. TOWNSEND. So that they did not inquire what had been done with this property between the spring of 1902 and the spring of 1904 when the sale was actually made?

Mr. CROMWELL. Yes, sir; so far as the Canal Company's property and operations were concerned, the United States Government was in daily observation of the work that was progressing. This was done through the appointment of the special agents of the Government, sent to and located upon the Isthmus for that very purpose, and to whom each day accounts of the work were furnished and under whose eye all the construction work was progressing. So far

as the railroad property and operations were concerned, the annual reports of the company, printed copies of which we have furnished to you, were furnished to the Isthmian Canal Commission. Besides this, their Isthmian agents had general knowledge of the railroad operations on the Isthmus—

Mr. TOWNSEND. The only report they had was the report of December 31, 1903?

Mr. CROMWELL. No, sir. They also had those of 1901 and 1902.

Mr. TOWNSEND. They had that prior to the inventory of 1902?

Mr. CROMWELL. Yes, sir.

Mr. TOWNSEND. So that the only thing that you presented that they had after the inventory of 1902 was this report of December 31, 1903?

Mr. CROMWELL. And the annual report of 1902.

Mr. TOWNSEND. December, 1902?

Mr. CROMWELL. Yes.

Mr. TOWNSEND. They had that?

Mr. CROMWELL. That, and that of December, 1901, also, as well as many preceding ones and much general data, which I can not of course enumerate, and which they obtained in their own way.

Mr. TOWNSEND. The United States Government kept very close track?

Mr. CROMWELL. Yes, sir. They took cognizance of the whole affair through their representatives on the Isthmus and through the Commission; kept track of the current conduct of business of the railroad company and of the canal construction in progress.

Mr. TOWNSEND. That proposition of the Canal Company in 1902, if it can be considered a proposition, to sell to the United States, included all the assets of the company, did it?

Mr. CROMWELL. All the property of the Canal Company on the Isthmus, together with these shares of the railroad company.

Mr. TOWNSEND. It was not intended to convey any property that was not on the Isthmus?

Mr. CROMWELL. The best statement is in the offer itself, and I would not venture to vary from it. The Canal Company addressed to the president of the Isthmian Canal Commission two cable messages which embraced the so-called offer. The first cable is dated January 9, 1902, and is as follows: "Admiral J. G. Walker, President Isthmian Canal Commission, Corcoran Building, Washington. The New Panama Canal Company declares that it is ready to accept for the totality without exception, of its property and rights on the Isthmus the amount of \$40,000,000, the above offer to remain in force up to March 4, 1903. (Signed) Bo, President of the Board." And a further cable on January 11, 1902, as follows: "Admiral J. G. Walker, President Isthmian Canal Commission, Corcoran Building, Washington. Offer of sale of our property applies also to all of our maps and archives in Paris. (Signed) Bo, President of the Board."

Mr. TOWNSEND. You considered that any property that you might have in New York or elsewhere, except in Paris or on the Isthmus, was not to be conveyed?

Mr. CROMWELL. That is right; but it included the Panama Railroad shares which were held in Paris, although not specifically mentioned in the offer.

Mr. TOWNSEND. Did you state to the representatives of the United States Government that you had property that was not included—not located—at those places, at the Isthmus or Paris?

Mr. CROMWELL. We had our cash assets at both places. Of course it goes without saying that such items were not included.

Mr. TOWNSEND. Your cash assets on the Isthmus were to go to the United States?

Mr. CROMWELL. No, sir; the Canal Company of course did not sell cash assets.

Mr. TOWNSEND. You did not include cash as assets?

Mr. CROMWELL. No, sir.

Mr. TOWNSEND. But you include the bonds that you bought up and turned into the Treasury as assets?

Mr. CROMWELL. Permit me to say, Mr. Townsend, that the subject to which you now refer is the matter of the Panama Railroad and not that of the Canal Company. Of course the Canal Company had nothing to do with bonds of the railroad company, for that was a matter under the jurisdiction of the railroad company alone.

Mr. TOWNSEND. You sold the shares of the Panama Railroad?

Mr. CROMWELL. Simply the shares; yes, sir. We did not, of course, sell the Panama Railroad, for that property was owned by the Panama Railroad Company itself. But we sold 68,886 shares out of a total issue of 70,000 shares.

Mr. TOWNSEND. When you got ready to declare your dividend in 1903, did you consult the United States about it?

Mr. CROMWELL. In the year 1903? No, sir.

Mr. TOWNSEND. You did not say anything?

Mr. CROMWELL. Oh, no; there was no duty or occasion to do so. The United States had not yet acquired the property nor paid anything on it; nor did it pay current interest on the \$40,000,000.

Mr. TOWNSEND. Now, do you know what the custom has been in making out the reports of assets of the road as to depreciating the value of the road, and property of the road, rolling stock, or anything else? Have you made depreciations for that?

Mr. CROMWELL. Do you mean allowances in the annual report?

Mr. TOWNSEND. Yes; did you have a depreciation fund?

Mr. DRAKE. We keep the property up as we go along. We spend part of our earnings each year in maintaining the property. Most of the equipment is twenty-five or thirty years old, but it has been kept in a serviceable condition all that time out of current earnings.

Mr. TOWNSEND. Whenever you have repaired anything have you put it in as extra capital?

Mr. CROMWELL. No, sir. The company has maintained its plant, comprising the roadbed, rolling stock, equipment, and the like, out of the current earnings of the company, charging this to operating expenses and not charging it to the capital account. Permanent improvements, such as the La Boca pier, which cost \$2,250,000, was, of course, credited to the capital account, not as current repairs.

Mr. TOWNSEND. You did not include that cost in the permanent improvements?

Mr. CROMWELL. Certainly; all of the La Boca improvement. Also for the erection of a light plant at Colon, an ice-making plant at

Colon, the new tracks for the Colon yard, improvements to Pier No. 2 at Colon, new coal lighters, and items of that permanent character increasing the capital investment.

But the current maintenance of the rolling stock is charged as an operating expense and not charged to the capital account. The permanent items I have referred to are additions to the property itself—new construction—not merely current repairs.

Mr. TOWNSEND. I notice an item in your statement showing disposition of your surplus earnings, the report of November 30, 1904, in which you say that 693 7 per cent sterling mortgage bonds in voluntary sinking fund canceled, \$693,000 which constitutes one of the items which goes to make up the \$4,186,314. Now, do those bonds draw interest; do you allow for interest on those bonds when you hold them in the treasury?

Mr. CROMWELL. These bonds were not continued in the treasury; they were canceled on the maturity of the sterling mortgage bond issue in 1897.

Mr. TOWNSEND. Well, you carried them as a part of your assets?

Mr. CROMWELL. Yes, we carried them as a part of the assets until the time we canceled them.

Mr. TOWNSEND. Well, while you were carrying them as a part of your assets did you allow them to draw interest?

Mr. CROMWELL. Yes, sir; because these bonds which came into the treasury represented earnings which were used to buy the bonds with, just as we might buy Government bonds. We had taken our cash in the years preceding, and had purchased these bonds instead of buying Government bonds, and they remained in our treasury as current assets in place of the cash which had been used to purchase them. The cash had been derived from the earnings. The company took its earnings and bought its own bonds as the best method of investing its surplus earnings. These bonds, therefore, were an investment held as treasury assets in place of the earnings which had been applied to purchase them. Therefore the interest paid upon these bonds was properly credited, just as you would credit interest if they were Government bonds purchased with the earnings of the company. They matured in 1897 and we then canceled them, thus reducing the capital indebtedness of the corporation. This is one way we used the accumulated earnings.

Mr. TOWNSEND. Now, supposing that on November 30, 1904, you were to declare a dividend, could you on that showing make a dividend in excess of the cash that you had on hand?

Mr. CROMWELL. Oh, yes; we could have done so, but did not do so.

Mr. TOWNSEND. How would you do that, Mr. Cromwell?

Mr. CROMWELL. The question of dividends, as you know, does not relate merely to cash that you happen to have in the vault. The dividend is payable out of the fund representing net earnings, net earnings only. Of course you can not pay a dividend out of the proceeds of bonds or from the sale of property, or from anything that impairs the "corpus" of the property. The dividend fund is derived from the accumulated earnings. Now, we had on November 1, 1896 (not to go back too far, but to have a convenient date), in the profit and loss account representing accumulated earnings, \$587,465.79.

Mr. TOWNSEND. December 31, 1896?

Mr. CROMWELL. Yes, sir. On December 31, 1897, the next year, we had \$2,713,940.70. Taking up the report for the following year, December 31, 1898, you will find we began with an accumulated profit of \$2,713,920.70. In that year we did not declare any dividend, but accumulated our earnings, and at the end of the year 1898 we had a balance of \$2,971,448.51. The next year, December 31, 1899, we started with this balance that I have just mentioned as of December 31, 1898, to wit, \$2,971,448.51. That year we did not pay a dividend, but again accumulated our earnings, and at the end of the year had a surplus of \$3,390,398.94. The succeeding year, December 31, 1900, we started with that balance of December 31, 1899 (\$3,390,398.94). In that year we did not pay a dividend, but again accumulated our earnings, and at the end of the year had a surplus of \$3,867,831.69. You will observe, gentlemen, how this fund was constantly growing. The next year, December 31, 1901, we started with that balance of \$3,867,831.69. In that year we again followed the same practice of accumulating our earnings and did not pay a dividend, and the surplus thus grew at the end of that year (1902) to be \$4,110,345. In the year ending December 31, 1902, we started with the balance of \$4,110,345, and in that year we paid two dividends, all fixed charges and operating expenses of every character, reduced our mortgage debt \$140,000, and still had a surplus of \$4,201,587.09.

Mr. TOWNSEND. How much was your dividend of that year?

Mr. CROMWELL. We paid two dividends, amounting to 4 per cent. The next year, December 31, 1903, we started with said surplus as of December 31, 1902, namely, \$4,201,587.09. That year we paid three dividends, aggregating 8 per cent; paid all fixed charges and operating expenses of every character; reduced bonded indebtedness \$140,000, and still had a surplus of \$4,191,929.91. We now come down to the year 1904, and I present you a statement prepared by the officers in advance of the publication of the annual report, which will only come out next April, and which shows that for the eleven months of the year 1904, our net earnings are \$561,315.95, over and above all fixed charges, operating expenses, and reduction of bonded debt \$140,000. Allusion has been made in some publications to the non-payment of dividends by the company during the years 1893 to 1900, and it has been asserted that the indications were that the company was in an unprofitable state. That is a fallacy which those who do not know the condition of the company might readily fall into, but which it needs only the slightest inspection of the condition of this company to show is an error. On the contrary, in 1896, the net earnings were, after bond redemptions, etc., \$545,684.53.

In 1897 they were \$409,873.37. In 1898, \$266,746.73; in 1899 they were \$295,231.77; in 1900, \$446,764.68, and yet we did not pay dividends during this time as you see; in 1901, \$259,590.12; in 1902, \$295,384.40; in 1903, \$401,068.30; in 1904, for the eleven months, \$561,315.95. Those are net earnings. The treasurer has prepared and I hand you a statement showing this more in detail:

EXHIBIT 6c.

Statement showing net earnings, 1896-1904, over and above redemption of bonds, payment of all operating expenses, and fixed charges.

1896.....	\$545,684.53
1897.....	409,873.37
1898.....	266,746.73
1899.....	295,231.77
1900.....	448,764.68
1901.....	259,590.12
1902.....	295,384.40
1903.....	401,068.30
1904 (11 months) ^a	561,315.95
	<u>3,481,659.85</u>
First-mortgage bonds redeemed.....	981,000.00
November 1, 1904.....	<u>4,462,659.85</u>
April 1, 1904.....	3,096,601.49
First-mortgage bonds redeemed.....	<u>981,000.00</u>
April 1.....	<u>4,077,601.49</u>

The profit and loss account, which on December 31, 1896, was \$587,465.79, had to its credit on December 31, 1903, \$4,191,929.91, and on November 30, 1904, \$4,578,245.86. This is after the payment of all operating expenses, all payments to the Republic of Colombia for the concession installment of \$250,000 per annum, all dividends that were declared during that period; and further, after reducing the capital indebtedness of the company to the extent of \$981,000 first-mortgage bonds. By the provisions of the 4½ per cent mortgage bond there is the requirement on the part of the company not only to pay interest, which of course we do, but also each year to apply \$150,000 as a sinking fund. The company has thus paid, since this mortgage was issued in 1897, \$981,000 in cash in reduction of that \$4,000,000 mortgage. And in addition to that has to-day in its treasury \$647,000 other of those same bonds.

Mr. TOWNSEND. What do you mean by the annual sinking-fund drawing?

Mr. CROMWELL. By the provisions of the mortgage of 1897, under which the 4½ per cent bonds were created, there is a requirement that the Panama Railroad Company shall deposit with the trustees of that mortgage in August of each year \$150,000 cash to be applied by the trustees of that mortgage, after public advertisements, in the redemption of as many bonds as that sum will realize. That practice has been invariably pursued by the company, the money has always been paid, and the trustees of that mortgage have publicly advertised for bids at the lowest price. Those offerings have come in almost invariably at about 104 to 105 per cent, and the money has been applied in the retirement and redemption of those bonds and accrued interest; and the bonds thus paid, redeemed, and canceled.

The CHAIRMAN. These annual payments that you have been making to the Government of Colombia were consolidated into one lump sum for a number of years. You issued the subsidy bonds for that?

^aApril 1, \$176,257.59.

Mr. CROMWELL. Yes, sir; in 1880.

The CHAIRMAN. When you liquidate one of those subsidy bonds, or purchase one of those bonds, you credited that to the annual accumulation?

Mr. CROMWELL. No, sir; I am very glad you asked that question, because it is a very pertinent one.

The CHAIRMAN. When you paid one of those bonds, or purchased one of those bonds, it did not go into the fund called the accumulated earnings?

Mr. CROMWELL. When we paid them off at maturity it went into the ordinary operating expense exactly as if we had paid a clerk or any other operating expense, because it was a payment of rental. When we purchased them out of surplus as a treasury investment it went into the profit and loss account.

The CHAIRMAN. Not at any time a credit?

Mr. CROMWELL. No, sir; not bonds paid off. That is a rental account. I would like to have you understand why we did not charge to capital account the subsidy bonds paid off. The subsidy bonds, to which you are now referring, were issued in 1880 solely at the request of the Government of Colombia to amortize in advance for a period of thirty years the annual subsidy payment of \$225,000 required to be paid directly to Colombia. The annual payment due from this company of the Government of Colombia under the concession is in the nature of a rental charge.

The CHAIRMAN. To be paid out of current earnings?

Mr. CROMWELL. Yes, sir; they were issued for the convenience, and for the convenience only, of the Republic of Colombia; not for money received or borrowed by this corporation. The corporation in 1880 issued and delivered to the Republic of Colombia \$3,000,000 of these so-called subsidy bonds, or notes (not secured by mortgage), with the provision that these bonds should only be redeemable at the rate of about \$225,000 per annum, to be drawn by lot to that amount; the amount thus redeemed annually being no more than the precise amount which the company was bound to pay to the Government of Colombia in pursuance of the provisions of the concession. So that it was no increase of the rental subsidy of this company one way or the other; it merely represented the annual payments to fall due up to 1908, and enabled Colombia, through the sale of these bonds, to get the moneys in advance. It is not, therefore, an obligation of this company in the sense that it is for money borrowed. It was a convenient form to Colombia for the payment of the subsidy as it fell due, from year to year, at the rate of \$225,000 per annum. The subsidy bonds represent precisely that amount of annual rental charge which this company was under obligation to pay to the Government of Colombia annually, up to 1908—no more, no less. The annual drawings and payments have occurred from 1880 down to this time, and always has been performed with precision and satisfaction. The total original issue of \$3,000,000 has now, by the annual payments I have described, been reduced to \$715,000. This balance of bonds run off at the rate of about \$225,000 per annum up to 1908.

The CHAIRMAN. How many of these bonds, if any, have been taken in and are now in the treasury of the company uncanceled?

Mr. CROMWELL. We have deemed it prudent to invest some of our earnings in these bonds.

The CHAIRMAN. How many?

Mr. CROMWELL. We have thus purchased and own \$126,000.

The CHAIRMAN. They are held in the treasury of the company?

Mr. CROMWELL. Yes, sir; as a free asset.

The CHAIRMAN. Are they carried in the current assets?

Mr. CROMWELL. They are the free assets purchased with accumulated earnings and are a part of the \$4,000,000 surplus fund.

The CHAIRMAN. In that connection that was a charge against the current expenses of the company?

Mr. CROMWELL. No, sir; not unless drawn for redemption, for it is not due and payable until so drawn. In the meantime it is not due. Permit me to make further explanation. Your question is very proper, because it brings out the truth. If these \$126,000 subsidy bonds represented a present indebtedness of the company for money had and received then we could not carry them in the accumulated surplus fund. But these subsidy bonds do not represent a present indebtedness. They are only evidence of an indebtedness to arise in the future and only due by this company when they are drawn at the rate of \$225,000 per annum as the equivalent of that amount of subsidy or rental falling due annually. They are not drawn until the year ends, and when the year lapses they are drawn and paid off to the extent of \$225,000, just exactly the same as that amount of cash would otherwise, at that identical time, have been payable to Colombia under the concessions. We had, for illustration, \$312,000 of those bonds which we had purchased with the surplus earnings. But while we held them in the treasury \$186,000 were drawn and paid off. Therefore, we paid them, canceled them, and took them out of this \$312,000 investment, because the time had arrived when we were bound to pay the \$186,000 through the annual drawings. This reduced our investment to the \$126,000 referred to. In respect of these \$126,000 we have no present obligation to pay them, because the rental charge which they were issued to represent is not yet matured—not yet due.

Mr. TOWNSEND. Then you take care of that in your surplus fund?

Mr. CROMWELL. Take care of that out of accumulated earnings. The subsidy bonds never have represented and do not represent a present indebtedness or moneys received. Of course they are an obligation of the company; but they are a liability which the company is only bound to pay in the manner provided in the bond and for the purpose of paying the subsidy rental as it falls due and not otherwise. The subsidy bonds represented a rental charge payable annually and not otherwise. So that these subsidy bonds, again I say, represent only a rental charge upon this property, which subsidy charge has rested there since 1867. But I again repeat that the subsidy bonds do not represent any money that has ever been received by the company in respect of them. They represent precisely what I have said, the rental obligation under the concession to Colombia, and it is so graduated in amount of annual payment that the annual drawings of \$225,000 represents precisely that amount of money which, at the end of each succeeding year, we otherwise would be bound to pay to Colombia by check. For their accommodation we pay the rental by drawing this bond, instead of by check. But in dollars and cents it does not become an obligation upon this company until the annual rental charge falls due and is then discharged in the form of paying off the bonds instead of by check.

Now let us look at the subject of this surplus fund from another standpoint. On December 31, 1901, the accumulated net earnings of the company were \$4,110,345. I ask you, gentlemen, to kindly follow me with the annual report for 1902. The first year succeeding that balance—and I shall try to make this subject as clear as a simple rule of arithmetic—on December 31, 1901, balance of surplus account was \$4,110,335. During the next year, 1902, what did we make? In that year we earned \$435,384. Out of which we reduced our capital indebtedness by buying, redeeming, and canceling \$140,000 of our 4½ per cent bonds.

In that year it paid a 4 per cent dividend of \$280,000. You will observe therefore that the dividend of \$280,000 was less than the net profit of \$295,000, after reducing the mortgage debt \$140,000. Thus it brings us at the end of that year to a balance of profit and loss account of \$4,201,587.09, which, after paying the dividend and further reducing the mortgage debt \$140,000, still left us at the end of the year 1902 a larger balance in the fund than we had at the end of the year 1901. We now come to December 31, 1903. That year we started, as I have just shown, with a balance \$4,201,587.09, which I again observe was more than we had the year before after payment of dividends during that year, and after reducing our mortgage debt \$140,000. We paid three dividends, aggregating 8 per cent in that year, but after paying those dividends and reducing our bonded indebtedness during the year \$140,000 more, we still had at the end of the year a surplus of \$4,191,921.91, being larger than we had December 31, 1901, when it was \$4,110,345.

Now, coming down to April 1, 1904, the officers report that the net earnings from December 31, 1903, to April 1, 1904, were \$176,257.59 over and above all fixed charges and operating expenses.

The CHAIRMAN. Were the Commissioners members of the board of directors at that time?

Mr. CROMWELL. No, sir; because the United States had not received the stock at that time.

Adding, therefore, to the surplus of December 31, 1903 (which was \$4,191,929.91), the earnings up to April 1, 1904, \$176,257.59, you have a total of \$4,368,187.50.

And after the payment of the dividend of 2½ per cent declared out of accumulated earnings up to April 1, 1904, and paid on May 3, 1904, \$175,000, we still have a surplus fund larger than that of December 31, 1901, to wit, \$4,193,187.50, as against \$4,110,345 December 31, 1890. The dividends paid in 1902, 1903, and the spring of 1904, amounted altogether to 14½ per cent, namely, \$1,015,000; so that between December 31, 1901, and May, 1904, the total amount paid in dividends was but \$1,015,000. Now, putting aside entirely the question of the accumulated earnings fund of over \$4,000,000, every item of which is on the books before you to be examined at your pleasure.

It should be borne in mind that this balance of surplus fund is after (and not before) payment of dividends during the same period. The dividends from 1896–1904 amounted to \$1,155,000, so that the surplus fund was over \$5,000,000—the net, after dividends, being over \$4,000,000.

Between 1896 and April 1, 1904, the net earnings (as per Exhibit 6c) amounted to	\$4, 077, 001. 49
Of which there was applied for first mortgage bonds redeemed	\$981, 000
And dividends	1, 155, 000
	<hr/> 2, 136, 000. 00
Net earnings	<hr/> 1, 941, 601. 49

Thus the earnings for these eight and a quarter years were sufficient to pay the dividends thrice over, independent of prior accumulations.

Putting aside entirely the fact that there was this \$4,000,000 surplus fund, and addressing our minds solely to the question of what were the earnings of this company during the same period, December 31, 1901, to April, 1904, we also find something of interest.

For 1902 our net earnings over and above operating expenses, including the \$250,000 to Colombia, were \$435,345. In the next year, 1903, they were on the same basis \$541,068; and for the first quarter of 1904 (April 1) the net earnings of this company were, on the same basis, \$176,257, which you will see makes \$1,152,670, which is in excess of the dividends paid within the same period (\$1,015,000) and quite independent of the fact that we had nearly \$4,000,000 more in the surplus fund. These net earnings of \$1,152,670 went, of course, into the treasury of the company, subject to the uses of the corporation, as any other net earnings would be subject.

The CHAIRMAN. Now, going back to that \$4,000,000 of bonds; when was that first issued?

Mr. CROMWELL. You mean the mortgage?

The CHAIRMAN. Yes.

Mr. CROMWELL. In 1897.

The CHAIRMAN. They were mortgage bonds?

Mr. CROMWELL. Yes, sir.

The CHAIRMAN. How long were they to run?

Mr. CROMWELL. Twenty years.

The CHAIRMAN. Whose indebtedness was that?

Mr. CROMWELL. This corporation; the Panama Railroad Company.

The CHAIRMAN. Who was bound for their payment?

Mr. CROMWELL. The Panama Railroad Company.

The CHAIRMAN. How could a railroad pay its bonded debt, except by marketing its capital or by appropriating its gross earnings?

Mr. CROMWELL. It could not, except one way or the other. That statement is correct, but a dividend fund is entirely independent of the question of indebtedness or obligations of the company.

The CHAIRMAN. It is a kind of a process of watering stock.

Mr. CROMWELL. Of course the relation to the corporation of a stockholder is entirely different from the relation of a creditor to the company. There is a fundamental difference between the legal status of the two interests.

The CHAIRMAN. That is the point I was unable to see. You and I differ as to the relationship a stockholder bears to the corporation.

Mr. CROMWELL. The universal rule, I think, is that the stockholder is entitled to have the net earnings of the company treated as a dividend fund, subject of course to the discretionary use thereof by the board of directors for the current needs of the corporation.

Mr. ESCH. There is one feature of this investigation that is pertinent just now, Mr. Cromwell, and that is the securing of control of the outstanding stock of the railroad company.

Mr. CROMWELL. That is, indeed, a very important question.

Mr. ESCH. We would like to get what information we can as to the best method in which that shall be obtained. You probably remember that Secretary Taft has made two recommendations, either acquisition of the stock, or, secondly, the lease of the railroad by the Panama Canal Commission. Have you any suggestions to make as to either remedy? You, perhaps, know that a bill has already been recommended from the committee, and a discussion has already been commenced in the House on a bill to condemn the outstanding stock.

Mr. CROMWELL. I do, sir.

Mr. ESCH. We want to know, if you feel free to express your opinion, as to what would be the best method for the Government to get absolute control; or whether it could be done in another way?

Mr. CROMWELL. I am in entire sympathy with the Government upon this subject, and am aiding it. I consider it to the interest of the United States to acquire ownership of all the capital stock of this company, and I also consider it to the interest of the small minority to dispose of their holdings at par and be relieved of the uncertainties of their investment. In my judgment the Panama Railroad Company should be maintained as a separate corporation, whether or not its management be reduced in force. It has a valuable charter, a special charter granted by the State of New York in 1849; one of the very few charters in the United States which permits a domestic corporation to own and operate a railroad in a foreign country. This charter gives that power. It also gives power to operate a steamship line in connection with the railroad line. The Panama Railroad Company also owns a most valuable concession granted by Colombia, officially recognized by the Republic of Panama, and having about sixty years yet to run. This concession covers privileges and grants of enormous benefit to the corporation, and consequently to its stockholders—not only from a material point of view, but for national strategic reasons. I esteem it of high consequence to the United States that the legal entity of the Panama Railroad Company be maintained, and that the concession be preserved in its original integrity. In my opinion the concession to the Panama Railroad Company confers grants, rights, and privileges other than the grants, rights, and privileges covered by the treaty between Panama and the United States. I need hardly remind you that the treaty between the United States and Panama relates principally to the construction of a canal, and incidentally to all auxiliary works, including this railroad. The primary purpose was the construction of a canal. The concessions made directly to, and owned by, the Panama Railroad, however, were unaffected by that treaty, so far as this corporation is concerned, as this corporation is not a party to that treaty. Therefore, this company holds still, in original virtue and force, all the rights, grants, and privileges of the concession granted to the Panama Railroad Company, and which concession is still existing. The company has maintained the concession with scrupulous care, and has fulfilled its obligation under it.

I am not referring to the precise method or form in which the operations of this company should be continued. I think, if the Government owned all the stock the management could be made with a reduced board of directors, and other simplifications; but I am emphasizing the view that the corporate entity and existence of the Panama Railroad Company should be preserved. As to how operations should be conducted under Government ownership I am not venturing to make a remark. The board of directors will decide that in the future. I am addressing myself solely to the question of preserving its corporate entity and existence, and not annihilating that, even under Government ownership of all the stock. I esteem it, then, of the highest interest to the United States to acquire all of the outstanding capital stock as the first choice of methods. The amount of stock owned by the United States to-day is 68,988 shares, which leaves in the hands of the public only 1,012 shares. We delivered to the United States, for the New Panama Canal Company, upon the closing of the Panama Canal transfer, 68,887 shares. Since that time the United States Government, through the Isthmian Canal Commission, has purchased 101 shares. Those 101 shares were purchased with the money of the United States, and the stock stands in the name of the officers of the United States. There need be no confusion on that point. Now, as to the 1,012 shares—these are owned by over 50 parties living in the United States, in France, and in England, and the holdings are in general in small amounts. An accurate list, from the company's records, of the holders of these 1,012 shares has been presented to you by the executive officers of this company. This list is a correct transcript from the books of the company, and I believe that the stock is owned by the persons who are there mentioned, with hardly any exception. In answer to your question I should state that I have been charged by the President and Secretary of War with the task of endeavoring to secure this outstanding stock, and have addressed to the stockholders a communication, which you probably have seen in the daily papers, and of which I hand you a copy.

EXHIBIT B.

49 AND 51 WALL STREET.

New York, January 17, 1905.

To stockholders of the Panama Railroad Company:

In connection with the consummation of the transfer by the New Panama Canal Company to the United States, which included about 98½ per cent of the capital stock of the Panama Railroad Company, the President of the United States and the Secretary of War have authorized me to afford the outstanding minority interest an opportunity to realize upon their holdings.

The Isthmian Canal Commission, in their official reports to the President, valued the capital stock at \$7,000,000, its par value (which comprehended allowance for all bonded indebtedness and other obligations having priority in liquidation).

Accordingly, you are hereby offered until the 23d day of February, 1905, the privilege of selling and transferring to the United States of America your holdings of the capital stock of the Panama Railroad Company at the par value thereof, payable in United States gold coin, upon compliance with the following conditions:

(a) Any dividend, up to 5 per centum, in the meantime declared by the company, shall belong to the selling stockholder.

(b) The shares to be duly assigned, with seal affixed, by the registered stockholder to "William H. Taft, Secretary of War of the United States" (either by

execution of the form of assignment engraved upon the back of the certificates therefor or by similar separate stock-transfer forms).

The assignment by the stockholder to be witnessed by two responsible persons, with their addresses and occupations added (not necessarily a notary or other official).

(c) In the cases of estates, trusts, guardianships, bankruptcies, or other fiduciary relations, satisfactory documentary and official evidence to be furnished of the title of the signatory parties and of their power to transfer.

(d) The certificates for shares so assigned to be delivered to The Bankers' Trust Company, No. 7 Wall street, New York City, United States of America.

(e) Payment will be made by said trust company, as my agent, upon such assignment, execution, and delivery.

I advise all minority stockholders to avail of this opportunity, which will expire at the time mentioned, after which date certain legal proceedings are contemplated to be taken.

WM. NELSON CROMWELL,
General Counsel.

Under this offering stock is being presented to me. Already I have acquired for the Government a substantial amount, which at my direction has been assigned to the Secretary of War and is owned by the United States, although not yet presented to the Panama Railroad Company for transfer. I shall pursue this effort until another stage in the work is reached. If the stock can be acquired under my offer, it will solve the problem and answer the question you, Mr. Esch, have asked me. But let us assume that all the stock can not thus be acquired.

Mr. ESCH. That is the point.

Mr. CROMWELL. We shall then be brought to consider some other solution of the problem. In my judgment that is found in the measure recommended by your committee, namely, the act authorizing the condemnation of the stock for the public use. It can not be done in this case by a State law; it must be by an act of Congress authorizing the condemnation of the stock for public use. I recognize that this is an unusual proceeding and one which at first rather startles the mind, but I consider that there is ample legal warrant for it. It is based upon the existence of a public necessity for the United States to acquire the shares—the national interests involved in the execution of a national public work. The analogy will be found in the condemnation of land for any other public use, such as a post-office, custom-house, or any other public work. Assuming the public need (and that is demonstrable, for the absolute control of the railroad is a necessity in canal construction) I see nothing in principle against the condemnation of personal property, to wit, shares, as well as of real property for such public use.

Mr. ESCH. Of course that is a very great power. You are aware of the decision of the supreme court of the State of Massachusetts?

Mr. CROMWELL. I am, and of a decision in Connecticut. The principle has found application in other corporate topics even when no public interest was involved. For instance, in the State acts permitting consolidation of railroads it is quite common to find provision that consolidation may be effected and the title to the property transferred in absolute ownership with the approval of the owners of a proportion less than the whole of the capital stock, say two-thirds in amount, and with the provision that the minority stock be appraised by judicial methods, its value thus determined, and paid for by the consolidated interest. That is equivalent to condemnation.

Mr. ESCH. That is provided for in the bill as proposed by this committee you are aware?

Mr. CROMWELL. Yes, sir. So, too, in some States you have doubtless found there are statutes permitting the leasing of the property of one corporation to another, and giving the power to lease with the consent of the owners of an amount in interest less than the whole. The minority stock is appraised, valued, and paid for, and is thereby required to be surrendered and canceled.

Mr. ESCH. Do you think that would be a wiser method than to put the stock in escrow?

Mr. CROMWELL. What do you mean by escrow, sir?

Mr. ESCH. Of course some of those outstanding stockholders may not consent, but they might put their stock in the hands of some trustee, for instance, and then accept the ordinary dividends and so on, and give the Government full control in that way.

Mr. CROMWELL. That, of course, presupposes the assent of that stockholder. You mean that stockholders who would not be willing to sell the right might be willing to maintain community of interest in the company, and accept, as you have suggested, a fixed annual return upon the stock.

Mr. ESCH. That is the idea.

Mr. CROMWELL. I do not think that would be advisable.

The CHAIRMAN. Is it your opinion that most of this stock can be reached by negotiation?

Mr. CROMWELL. I think that most of it can be. Statutory power to appropriate for public use the outstanding stock is, however, advisable, because there will undoubtedly be some shares lost or held by parties indifferent because of very small holdings or otherwise.

Mr. ESCH. We get service by publication; that is provided for in the bill.

Mr. CROMWELL. Another method which might be considered is proceedings to dissolve the Panama Railroad Company under the statutes of the State of New York. This is a corporation of that State, and of course on the subject of dissolution would be governed by the laws of that State. In brief, the laws of the State of New York provide that the corporation may be dissolved by the court upon the petition of the board of directors. The consent of stockholders is not required. In place of such consent there is substituted the judgment of the court. In the State of New York it is the supreme court that is given jurisdiction of this proceeding. Whenever the board of directors consider that it is to the best interests of all the stockholders to terminate the existence of the company and to wind up its affairs, they may present to the supreme court of the State of New York a petition setting forth the grounds for the dissolution and exhibiting the assets and liabilities of the corporation, making a complete exposé of its condition. Notice of that application must be given to all the creditors and all the stockholders of the company by publication, etc. A date is fixed by the court for the hearing upon that application. The board of directors present the affirmative. Any stockholder or creditor, if he desires, will be heard in the negative, and upon full hearing the court gives judgment. If it decrees dissolution (grants the petition of the directors) then it may appoint or dispense with the appointment of a receiver

(in its discretion) to sell out, liquidate, and wind up the affairs of the company. That course being followed, either through the medium of a receiver or board of directors acting as trustees for the purpose, the final result is a sale and disposition of all the concessions and other property of the company, a marshaling of all the liabilities and assets, and the complete liquidation of the affairs of the corporation. Now we must assume that this course would not be adopted unless the United States intended to become a purchaser of the property at a sale under such proceeding. In this case the mortgage bonds could be retired at a small premium of 5 per cent, as there is provision in the mortgage to this effect.

Mr. TOWNSEND. It would have to be a public sale?

Mr. CROMWELL. A public sale.

Mr. ESCH. In that connection you made a very favorable showing for the company in the last three or four years. That would have an effect upon the stock valuation. Have you had any difficulty in getting or purchasing some of this outstanding stock by reason of the high valuation of it?

Mr. CROMWELL. I consider it to the interest of such a small minority to realize par upon their holdings, in view of the uncertainty of a fixed income return, the absence of any market, their unavailability as an asset in business transactions, the inevitable effects upon the railroad of the opening of the canal to commerce. To meet the enormous business of canal construction it will be advisable to largely increase rolling stock and equipment, enlarge terminal facilities, and perhaps double track the road. This will absorb the cash resources of the company. I think stockholders will agree with me in this view.

Mr. ESCH. You said that it was wise to maintain the corporate integrity of the Panama Railroad Company. If the Government secures control of this stock, how will you reconcile Government control and corporate integrity?

Mr. CROMWELL. The United States can as well own all the stock as they can own 99 per cent, and still maintain the corporate integrity. As I have said, the board of directors can be reduced in number and corporate management can be made as simple as desired—under Government ownership of the stock.

Mr. ESCH. You do not anticipate that relationship will arouse any trouble or difficulty?

Mr. CROMWELL. None whatever. There is no reason why the United States Government may not maintain the corporate entity with 100 per cent as it does now with 99 per cent.

Mr. ESCH. That would imply separate control.

Mr. CROMWELL. It means that this asset of the Government would be managed by the Government as a separate entity, that is all. Otherwise it would be necessary for the Government to provide at once the cash to pay off all bonds, etc., and itself become directly responsible for the management of the business—I mean directly liable for daily operations, traffic contracts, railroad accidents, etc.

Mr. ESCH. I understand your position.

Mr. LOVERING. When you say you advocate maintenance of the legal integrity of the Panama Railroad Company, do you include in that the entire organization, including the steamship lines?

Mr. CROMWELL. I will present my views in a few words. My opinion is: (1) That the corporate entity of the Panama Railroad Company should be preserved, for the reasons I have given in answer to the committee's questions. The corporate organization can be simplified under Government control, and yet the advantages I have pointed out can be preserved.

(2) That it is to the best interest of the United States to maintain and operate its New York-Colon Steamship Line. In addition to its earning power and its relation as a reliable feeder to the railroad, the Atlantic Line is an instrumentality of inestimable material and strategic value to the Government in the construction, operation, maintenance, and protection of the canal, both during and subsequent to completion of the canal. It insures the quick, certain, and regular delivery of the vast amount of construction material and other supplies, and it frees the Government from the power of contractors or any combination, imposition, or inefficiency of others. It will save the Government millions of dollars and much valuable time in construction. Moreover, in my judgment, the national interest demands the ownership and operation of its own line to its canal possessions. It should not be dependent upon any other party for quick, certain, and satisfactory communication to and from the point where it has such a stupendous investment and which it has become morally obligated to the world to maintain and protect. As the conservator of the greatest material factor of civilization, sound statesmanship demands the very best—the most reliable—and the quickest means of communication with the possessions 2,000 miles distant, and with which our fortunes and honor are forever bound.

(3) That the steamship and accounting departments can be more efficiently, promptly, profitably, and satisfactorily regulated and managed from New York as the headquarters; but that under complete Government ownership the corporate organization can be simplified and officials of the Government, already on its pay rolls can be economically utilized to a certain extent.

(4) That while the Pacific Mail contract is a profitable one, and it would not, under private ownership, be good business policy to leave a certainty for an uncertainty, or to surrender assured profits to try new experiments, yet that under Government ownership the proper policy is to avoid traffic contracts of an exclusive character. That while this policy is being pursued it is also a duty to the public interest that an equally good substitute be found. Otherwise the splendid present business will be seriously crippled and loss ensue. Instead of relying upon hopes, conjectures, and theories as to the certainty of such a substitute, the subject should be brought out of the clouds and put to a practical test and a workable result reached. I intend to urge this course upon the board, so that the new situation shall be met the best it may. We all, surely, have the heartiest disposition to master the problem.

The CHAIRMAN. If we were to part with the ships that are now operating in connection with the railroad would it increase or decrease our annual net earnings?

Mr. CROMWELL. I think it would decrease them.

The CHAIRMAN. Very largely?

Mr. CROMWELL. Very largely. Entering upon that aspect of the question only very briefly, I am speaking now not only as counsel of

the corporation, which I have been for many years, but as a member of the board of directors and executive committee, in which I have sat for many years. Every one of these problems of transportation have taxed the care and ingenuity of us all for years. We have been all through this question. It is now for the first time coming, and very properly, to you gentlemen. We have lived through it for years. We have lived through the period of what might be called the "open-door" policy, throwing down our advantages and opening the Isthmus to the world upon like terms. We have tried that and we lost heavily. This is a business corporation, not an eleemosynary one. This is a splendid business organization. We recognized that we had been intrusted with the care of millions of property upon which we must make earnings. We recognized that we had no right to abandon the property and leave it open to rival steamship or transcontinental lines to take the earnings. In our effort to reach the best result, we in former years tried the open-door policy. We lost hundreds of thousands of dollars in that experience. Upon another occasion, and in response to the clamorous demand of the merchants of the Pacific coast (against what they considered great exactions of the great transcontinental railroads), we made an alliance with the merchants of San Francisco in the establishment of an independent line—*independent of the Pacific Mail, independent of all associations other than with the shipping merchants of San Francisco.* No interest or right could possibly be more active, more interested, more aggressive, than the shippers of San Francisco. They formed a corporation in 1893-94, under the laws of California, based upon subscriptions by merchants of the city to stock of that company. It was almost in the nature of a public-spirited subscription, a subscription moved by their resentment against the transcontinental lines and actuated by active public spirit and keen interest. The Panama Railroad Company made contracts with that California corporation. It dismissed the Pacific Mail entirely—opened war on them. That alliance with the merchants of San Francisco continued for a year and a half. Its result was disastrous to them and to us. The merchants struggled against the situation, but the result was that they lost all their capital invested and much more, aggregating, I understand, from three to four hundred thousand dollars, and they had to throw up the contract with us. In desperation, our company, being left without a Pacific coast connection in mid-season, was compelled to continue the line itself. Having ourselves no steamers on the Pacific, we had to charter them at large cost. This we did, and we continued for our own account the line abandoned by the San Francisco merchants. With all our efforts this company sunk several hundred thousand dollars in that experiment; and it was the lesson of that experience that led us to make a new contract with the Pacific Mail Steamship Company. We made that contract with the Pacific Mail Company in 1895. The contract expired in 1900, and was not then renewed by this company, for there had been presented to us earnest demands by South American steamship lines and others for the termination of the exclusive privilege and the introduction of the open-door policy. After months of study, the board determined to give the open-door policy a serious trial. We refused, therefore, to renew the contract with the Pacific Mail. It led to much bitterness of feeling, as we absolutely terminated relations of every kind with that company, and for one year and a half we had

no connection with them. During that time we seriously and conscientiously practiced the open-door policy, encouraging business, of course, in the most active fashion, and made agreements with the Pacific Steam Navigation Company, a British corporation, and the South American Steamship Company, otherwise known as the Chilean Line. They undertook the business, but again it was found an unfortunate experience. We did not attain the results we hoped for, nor did they, and the obvious facts made it plain that that method of business was unsatisfactory and unprofitable to all parties. After that experience we considered again the resumption of relations with the Pacific Mail Company, and negotiations were opened, continued for months, and finally ended in the present contract of June 11, 1902.

THE CHAIRMAN. A contract still in force?

MR. CROMWELL. Still existing; but we have given the six months' notice of termination. That contract has thus far proven satisfactory from a business point of view. The company has a joint business—railroad and steamship. For bookkeeping and accounting purposes we divide the profits, as all railroads divide their business, between the several departments. It is of no consequence to the company whether the earnings go into one pocket or the other. They go into the common pot, and all expenses are paid from the common pot; the results are common.

MR. TOWNSEND. But you keep them so as to determine—

MR. CROMWELL. Mainly for the purpose of being able to determine, as far as we can, whether the several departments are conducted at a profit or at a loss.

MR. TOWNSEND. You know whether it is profitable or not?

MR. CROMWELL. Practically; yes, sir. But upon this topic I say that whether the railroad or the steamship department is profitable is a matter purely of business judgment. Bear in mind that this railroad is only 47 miles long. It is common sense that you could not operate a railroad 47 miles long and realize upon it sufficient moneys to pay operating expenses, \$250,000 per annum to Panama, the other fixed charges, and a fair dividend on the investment. For fifty-five years the managers of the company have thought differently, and they have managed this company successfully. The Atlantic Steamship Line is the feeder to the railroad line and insures it a reliable and profitable business; it frees the railroad from the vicissitudes, uncertainties, and fluctuations incident to dependence upon others. We have contracts with European lines that have continued satisfactorily for forty years.

MR. ESCH. Still in force?

MR. CROMWELL. Every one of these; yes. There is a large business flowing from European ports. Please notice this map [exhibiting map]. You see that from Hamburg there is a line contributing directly to Colon; another line from Havre, another line from Southampton, another line from Liverpool, Glasgow, Antwerp—altogether 10 lines converging at Colon, and pouring in their business at that point; and they have been doing so from thirty to forty years. Do you want to lose it or impair it? We have lines on the Pacific side that have contributed in the same way to the business from that end for many years.

THE CHAIRMAN. Linked in a great many long lines.

Mr. CROMWELL. It not only owns the railroad, which is a splendid piece of property.

Mr. DRAKE. You can go from one end to the other in an hour, if need be.

Mr. CROMWELL. It owns the right of way, of great value to-day; owns good terminals at each end; it owns practically the whole town of Colon.

Mr. DRAKE. The ground it is built on?

Mr. CROMWELL. With a small exception all of the land of Colon is owned in fee simple by the Panama Railroad Company. It owns one-half of the islands of Flamenco, Naos, Culebra, and Perico by title deed.

The CHAIRMAN. Who owns the other half?

Mr. CROMWELL. The Pacific Mail Steamship Company.

The CHAIRMAN. That is, an undivided half?

Mr. CROMWELL. An undivided half. It owns blocks of land with buildings thereon in the very heart of Panama city, independent of the concessionary lands.

Mr. ESCH. What is the width of the right of way?

Mr. CROMWELL. We have a full right of way and the right to double track our line. We have the right, under our concession, of condemnation of lands, so that there is no limitation to the growth of the Panama Railroad on the Isthmus of Panama for all purposes of its business. It has been declared by Colombia (Panama) an enterprise of public utility.

Mr. LOVERING. Has this contract with the Pacific Mail Company had the effect to put up the price of transcontinental traffic?

Mr. CROMWELL. On the contrary it has had the effect of lowering it. The Panama Railroad is the only influence that diminishes the transcontinental rates, for it is the only regulator of the rates of transcontinental lines on low-class freight.

Mr. SIMMONS. Absolutely.

Mr. CROMWELL. The Panama Railroad also owns three steamships, two of which have been brought by recent reconstruction to the highest degree of efficiency and usefulness, and adapted especially to this trade. It owns the finest pier on the South American continent, costing \$2,250,000. It also owns a fleet of 22 lighters, which are employed in the Bay of Panama. It has, as I have mentioned, established connections with nine or ten lines running to all points of Europe, and with three or four lines tributary to the Pacific side. The only mortgage indebtedness held by the public upon all this property is a balance of \$2,372,000. That is all, a mortgage small in amount in comparison with the value of this property. It has no floating indebtedness, and we never know such a thing as a promissory note in the business of the corporation. This company never borrows. It is always a lender of money. There has not been a day in many years when the company has not been a lender of money. There has not been a day in many years when we owed, currently, anything but a trifling amount for current accounts, or for these permanent improvements, since paid for with the bonds. The balances in the bank are hardly ever less than half a million dollars, and are so this minute after payment of our dividend of \$350,000 last week. And in addition to this we have bonds in our treasury to the amount of \$773,000 representing past earnings. The Panama Rail-

road Company has never ceased operation one minute since it began fifty years ago. It has never defaulted in the payment of a dollar, a record which I think we have a right to view with pride, and which hardly has a parallel in the history of American railroads.

Mr. TOWNSEND. To what extent is it encumbered with passes?

Mr. CROMWELL. The subject of passes has always been a very perplexing one. Under the concession from Colombia, to which I have referred, the company was obligated to transport gratuitously all troops, officers, and officials of the Government. That was one of the terms upon which the concession was obtained. These classes constitute the bulk of the free passes. There are about 26 other passes called "land passes," which are issued to parties who granted the right of way in 1850 and in connection therewith. Of course the local officers of the company issue ordinary trip passes for special purposes, such as to the ministers and consuls of foreign governments residing there, clergymen, dignitaries, and agents of steamship lines who give us their business. Those courtesies are extended to those with whom we have serious business or diplomatic interests.

Mr. ESCH. How about the army, the Colombian army? The Panama army of course does not amount to anything.

Mr. CROMWELL. At this time, no. It has been disbanded. I wish to say that the subject of passes has been recently examined afresh very carefully. It is a very delicate subject, a subject which must be dealt with very wisely and honorably, because the recipients are men of importance in the community and it is of consequence that we do not manifest an unusual attitude in railroad practice, and furthermore that we observe the obligations of the concession. The passes have recently been very much reduced in number. The subject of the issuance of passes of course lies more directly in the jurisdiction of the local officers on the Isthmus. No passes are issued from this office. The general superintendent is charged with the duty and power to deal with that subject locally, with due regard to our concession and the best interests of the corporation, treating its affairs in a broad spirit and bearing in mind that it is a concessionary road. Under the treaty with Panama, the present treaty, there is provision respecting the transportation of its officers and employees. The local officers are charged with the duty of very rigid scrutiny and the issuance to the smallest number consistent with concessionary duties, good business, and the best interests of the company. Have I answered fully?

Mr. TOWNSEND. Yes.

Mr. ESCH. With each year's work on the canal, there would tend to be a depreciation of the railroad property, would there not? When the canal is finally completed, the railway line would be devoted almost wholly to local traffic?

Mr. CROMWELL. That is a very interesting question, Mr. Esch, and one upon which traffic men differ. I have given considerable thought to it. I do not share the opinion that the Panama Railroad will become valueless at that time. No man can judge what will be the conditions ten years hence, with the new traffic element (the canal) as a practical thing before it—not a theory, as to-day. The railroad will probably then be operated by electric power generated at the Gamboa Dam, or one of the other great water-power points. Electricity will be inexpensively produced on the line of the canal by water power, and the railroad may be operated in that way, thus

greatly reducing the cost of operation. At that time, too, we will have paid off this first mortgage out of earnings and our fixed charge will thus be reduced; the local business will be active, and Panama and Colon will be far more important than they are to-day. Nearly every passenger approaching the canal by steamer will disembark at one or the other termini, Panama or Colon, and, taking the quick railroad transit across the Isthmus, in less than an hour, will visit the cities and observe the interesting sights during the day, while the steamer is passing through the canal. The steamer will enter the canal at sunrise at Colon, say, and will make its exit at Panama at sunset, and the passenger, in the meantime, will have passed over by the electric railroad and be amusing himself in either city while the steamer is moving through the canal. The local traffic will have grown to importance; the country will have developed; business will have sprung up along the line of the road, furnishing local traffic. There will be freight coming to either terminal, but not passing through the canal at all, and which could not afford the tolls which must be charged to operate the canal; and cargo of vessels which will not have a sufficient freight to justify them in passing through the canal, or having cargo destined to a point not justifying canal transit. Therefore, such freight will have to be transported over the railroad and take ship at the other point, thus saving the heavy toll between. Again, there will be business naturally tributary to either termini up and down the coast, employing an entirely different class of shipping, of very light tonnage.

Mr. ESCH. I ought to know, but what will we have to pay Panama for the right of way?

Mr. CROMWELL. Nothing. Except for one or two small claims, the Panama Railroad owns its entire right of way; has no obligations to pay either to Panama or Colombia in respect of it.

Mr. ESCH. What relationship does our Government sustain to the railroad company on freight shipped over the line for use on the canal? Do we get a special rate, or is the Government of the United States charged the regular rate?

Mr. CROMWELL. We have a special rate, as the traffic officers will give you more in detail. The United States rates in no case are higher than those to the public, and in some cases are lower, where, by reason of larger quantity, it is justifiable for the company to make lower rates.

Mr. ESCH. Was the New French Panama Canal Company given a like rate?

Mr. CROMWELL. You are now referring to the period of 1883, 1884, or 1885. That, of course, is long before our time. I think not; no, sir; they were not. On the contrary, the railroad company was given higher rates.

Mr. TOWNSEND. I think, as Mr. Esch has suggested, there is a good deal of this testimony that we want, that you could tell us as well in Washington.

Mr. CROMWELL. Yes, sir.

Mr. ESCH. I would like to ask some questions of Mr. Drake in regard to the books.

STATEMENT OF E. A. DRAKE.

Mr. TOWNSEND. Mr. Drake, you are the vice-president and secretary of this company?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. How long have you occupied that position?

Mr. DRAKE. As second vice-president and secretary for three years; as vice-president and secretary since September, 1904.

Mr. TOWNSEND. How long have you been connected with the Panama Railroad Company?

Mr. DRAKE. Since April, 1888, in various capacities, beginning as a director, then as assistant secretary, then as secretary, then as assistant general manager and secretary, and then as second vice-president and secretary, and now as vice-president and secretary. I succeeded Mr. Whaley, who for a long time was the active vice-president and general manager of the corporation for a number of years, living in New York and visiting the Isthmus several times. Afterwards we opened a European branch, as we had connections with nine steamship lines there. We have been unable to depend upon the accounting by the connecting lines. We have always had to verify their accounts and settle differences. Later, Mr. Whaley was elected to the position of first vice-president, resident in Paris, in charge of the European department. In that position he had charge, among other duties, of the company's traffic interests abroad, conducting negotiations, and carrying on correspondence with the executive officers of our European connecting lines, and of renewing expiring traffic contracts and making new rates and arrangements for the following season, and of determining rates from Europe, until recently, when the control passed into the hands of the United States. Mr. Whaley then resigned and I succeeded him.

Mr. TOWNSEND. The books have been under your charge?

Mr. DRAKE. Yes, sir; in a general way, I have had charge of the books, with subordinates, the treasurer, and the auditor.

Mr. TOWNSEND. How much stock have you in this company now?

Mr. DRAKE. One share.

Mr. TOWNSEND. Is that all you have ever had?

Mr. DRAKE. That is all, since I became a director in 1888.

The CHAIRMAN. You are an employee, rather than an owner of the road?

Mr. DRAKE. I am a representative director; that is a recognized position.

Mr. CROMWELL. That is true of all the directors.

Mr. TOWNSEND. Has this stock ever been on the market?

Mr. DRAKE. Since when?

Mr. TOWNSEND. Since you have been connected with it.

Mr. DRAKE. There is always a market for it.

Mr. ESCH. Just in that connection, I notice that General Davis in his report says that the stock of the Panama Railroad Company has not been quoted for many years, and its market value is not known.

Mr. TOWNSEND. Has it been quoted?

Mr. DRAKE. By the stock exchange regulations when all but a small minority of any listed stock passes into the hands of one holder dealing in that stock are officially suspended. It was a very active stock

for a great many years, a very high-priced stock up to the time when the French Canal Company bought all of the capital stock except a small minority. After that time the stock was stricken from the stock list and official quotations ceased, for the reason I have stated.

Mr. TOWNSEND. Through what range does the quotation pass?

Mr. DRAKE. The transactions have all been from 60 to par. There have been sales at various times of small lots.

Mr. TOWNSEND. That has been a profitable piece of property almost from the beginning?

Mr. DRAKE. I think it is one of the most profitable pieces of property in the world.

Mr. TOWNSEND. And has been all the time?

Mr. DRAKE. The incorporators acquired almost invaluable franchises, as has been proven by the result of operation.

Mr. TOWNSEND. And has paid as high as 23 per cent dividends?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. But still it is sold usually from 60 to 100?

Mr. DRAKE. For the reasons I gave you. A minority stockholder has to get what he can for his stock, because there is no fixed market and there are but few shares outstanding. All of the minority shareholders were offered by Mr. De Lesseps an opportunity to sell their stock at 250, but some did not avail of it. Since then they have had to get what they could. Now they have exactly the same kind of an opportunity to get par from the United States Government.

Mr. CROMWELL. Uncertainties about the future, and also the fact that the earnings have accumulated in the treasury and have not been paid out in dividends.

Mr. TOWNSEND. Mr. Drake, can you tell us why they accumulated in the treasury?

Mr. DRAKE. Yes, sir; it was the policy of the company, because we were buying ships, and were going through adverse traffic periods with uncertain results and because in 1895 we had undertaken the construction of the La Boca pier, which cost us two million and a quarter cash, and both the directors and shareholders preferred to strengthen the company in anticipation of these extraordinary requirements.

Mr. TOWNSEND. Is there an actual increase and profit for the year 1893-94?

Mr. DRAKE. The contract with the Pacific Mail Company that was entered into in February, 1878, expired in 1893, and we declined to renew it, because the Pacific Mail's terms were so exacting that we could not reach an agreement. We had arranged to establish a line of steamships between Panama and San Francisco, when the merchants of San Francisco learned of it and came forward and took up the enterprise.

Mr. TOWNSEND. Is that the only object you had, to meet those extraordinary expenses, for withholding dividends?

Mr. DRAKE. Yes, sir; it was a policy adopted. We so stated in the printed annual report of each year.

Mr. TOWNSEND. It was not the policy of the French company to get rid of the stockholders and get possession of the stock?

Mr. DRAKE. Oh, not at all; as far as we know, there was nothing of that kind. The minority shareholders never were approached in any way that we know of, and no attempt made to purchase their stock.

On the contrary, it was offered at times and not taken by the canal company.

Mr. TOWNSEND. Did they make systematic effort to get possession of the stock?

Mr. DRAKE. Not that I know of.

Mr. CROMWELL. I can say that they did not.

Mr. TOWNSEND. Are these statements that you have prepared here, Mr. Drake, correct statements taken from your book, showing the various items therein scheduled?

Mr. DRAKE. Yes, sir; absolutely correct and carefully prepared. They are entitled as follows:

Statement showing dividends paid.

Statement showing redemption of first-mortgage bonds (4½ per cent) of 1897.

Statement showing redemption of first-mortgage 7 per cent bonds, how effected.

Statement showing transcript of trustees of sinking fund loan account of 1897 relating to sale of bonds in said account and accumulation of interest applied to redemption of general mortgage sterling 7 per cent bonds.

Statement showing general mortgage 4½ per cent bonds of 1897, how held.

Statement showing subsidy bonds, 6 per cent.

Statement showing redemption of 6 per cent subsidy bonds.

Statement showing analysis of entry of \$1,746,859.96 to credit of profit and loss in 1897.

Mr. TOWNSEND. We will have them marked Exhibits 6e, f, g, h, i, k, l, and m.

EXHIBIT 6e.

Statement of dividends paid.

1901, 2 per cent.....	\$140, 000
1902, 4 per cent.....	280, 000
1903, 8 per cent.....	560, 000
1904, 2½ per cent.....	175, 000

EXHIBIT 6f.

Statement showing how redemption of first-mortgage 7 per cent bonds, due October 10, 1897, was effected.

2,686 bonds outstanding October 10, 1897, were retired at a cost of. \$2, 612, 338. 34
Of which there was redeemed by proceeds of sale of 2,000 general-mortgage 4½ per cent bonds..... 1, 907, 250. 00

Leaving a balance of..... 705, 088. 34

Which was contributed by the voluntary sinking fund.

EXHIBIT 6g.

Statement of redemption of first-mortgage 4½ per cent bonds, issue of 1897.

October 1, 1898, 141 bonds.....	\$141, 000
October 1, 1899, 140 bonds.....	140, 000
October 1, 1900, 139 bonds.....	139, 000
October 1, 1901, 141 bonds.....	141, 000
October 1, 1902, 140 bonds.....	140, 000
October 1, 1903, 140 bonds.....	140, 000
October 1, 1904, 140 bonds.....	140, 000
Total.... 981 bonds.....	981, 000

EXHIBIT 6h.

Redemption of 6 per cent subsidy bonds.

November 1, 1896,	107 bonds-----	\$107, 000
November 1, 1897,	114 bonds-----	114, 000
November 1, 1898,	121 bonds-----	121, 000
November 1, 1899,	129 bonds-----	129, 000
November 1, 1900,	136 bonds-----	136, 000
November 1, 1901,	144 bonds-----	144, 000
November 1, 1902,	153 bonds-----	153, 000
November 1, 1903,	162 bonds-----	162, 000
November 1, 1904,	172 bonds-----	172, 000
Total-----	1, 238 bonds-----	1, 238, 000

EXHIBIT 6i.

Sinking fund 6 per cent subsidy bonds.

Original issue of-----	\$3, 000, 000
Redeemed by annual sinking-fund drawings-----	2, 285, 000
Outstanding-----	715, 000
Held in treasury-----	126, 000
Held by public-----	589, 000

First mortgage 4½ per cent gold bonds.

Authorized issue-----	\$4, 000, 000
Held by public-----	2, 372, 000
Redeemed by annual sinking-fund drawings-----	981, 000
Held in treasury-----	647, 000
	4, 000, 000

EXHIBIT 6k.

Transcript of trustees of sinking-fund loan account of 1897, relating to sale of bonds in said account and accumulation of interest applied to redemption of general mortgage sterling 7 per cent bonds.

177 United States registered fours, 1925-----	\$222, 798. 75
257 United States registered fours, 1904-----	286, 876. 25
105 Northern Pacific general lien-----	58, 850. 00
1,000 shares Northern Pacific preferred-----	41, 587. 50
50 Oregon Improvement first mortgage-----	50, 187. 50
Accumulated interest on securities other than companies and accumulated interest due on company's securities in sinking fund--	81, 559. 96
	741, 859. 96

Amount required in excess of proceeds sale of 2,000 bonds 4½ per cent general mortgage to retire 2,686 outstanding general mortgage 7 per cent bonds, transferred to sinking fund-----	705, 088. 34
Unexpended balance of sinking fund transferred to credit of new voluntary sinking fund, resolution as per minutes of executive committee, October 15, 1897-----	30, 771. 62

EXHIBIT 6L.

Profit and loss account, December 31, 1897.

Balance to credit of voluntary sinking fund October 10, 1897----- \$1,746,859.96

Made up as follows:

312 Panama Railroad sinking fund 6 per cent subsidy bonds held in voluntary sinking fund.	\$312,000.00	
Unexpended balance in voluntary sinking fund (transferred to company's treasury as free assets, resolution of executive and finance committee, October 15, 1897)-----	36,771.62	348,771.62
693 general mortgage 7 per cent sterling bonds held by voluntary sinking fund-----	693,000.00	
Proceeds sale of securities in voluntary sinking fund (resolution of the executive and finance committee, September 3, 1897)-----	705,088.34	1,398,088.34
		<u>1,746,859.96</u>

Mr. TOWNSEND. You add a statement here, and this is the statement that you make monthly to the directors, is it?

Mr. DRAKE. Yes, sir; it is a summary of the monthly operations of the railroad, making comparisons of the results of the current month with the same month of the previous year. As the year progresses it shows a comparative statement for each month.

Mr. TOWNSEND. You make this for the benefit of the board of directors?

Mr. DRAKE. The only statement that is made by the Panama Railroad Company is its annual statement, which is made at the annual meeting in accordance with the by-laws.

Mr. TOWNSEND. This is made for the directors?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. How long have you been making this kind of a statement?

Mr. DRAKE. Since 1896, when we changed our method of book-keeping.

Mr. TOWNSEND. That brings me to the point, how did you happen to change your method of bookkeeping in 1896?

Mr. DRAKE. There was a question raised as to just how much of the revenue of the company was applicable to the payment of dividends, and to determine that question Mr. John Scott, a public accountant, was employed. He went over the records of the company from its incorporation to 1896.

Mr. TOWNSEND. Who was Mr. Scott?

Mr. DRAKE. He was a public accountant.

Mr. TOWNSEND. Where?

Mr. DRAKE. In New York. The treasury minutes show that this report of the accountant was brought in after the vice-president and general manager had changed our method of bookkeeping to substitute a more modern method.

Mr. TOWNSEND. Mr. Cromwell, you had something to do with the investment of the 10 million dollars received by Panama from the United States?

Mr. CROMWELL. Yes, sir.

Mr. TOWNSEND. Was any of that money invested in any of the securities of this road?

Mr. CROMWELL. It was. The Panama Government manifested its confidence in the securities of this company by investing about one million dollars in the first mortgage bonds of this company.

Mr. TOWNSEND. What bonds are those. What do you call them?

Mr. CROMWELL. The 4½ per cent first mortgage.

Mr. TOWNSEND. And that investment is still there?

Mr. CROMWELL. Still there.

Mr. TOWNSEND. Are those bonds subject to the drawings?

Mr. CROMWELL. Yes, all part of the same class. The bonds were purchased by the Panama Government in the open market, and not from this corporation.

Mr. TOWNSEND. Now, Mr. Drake, I think Mr. Cromwell may have explained one thing which your books undoubtedly show, but I want to get it clear.

I notice in your report of 1903 to the stockholders, on page 6 headed "Panama Railroad Company," that when you analyze the sinking fund, the 6 per cent subsidy bonds, you speak of the original issue of \$3,000,000 which Mr. Cromwell has explained. In parenthesis you say: "Being payments of the advance of annual subsidy of \$225,000 to the Republic of Colombia." What I want to know is why that is not \$250,000?

Mr. DRAKE. \$25,000 of the \$250,000 is made payable by the company, under this concession, directly to the Department of Panama. The other \$225,000 is applied, first, to the payment of interest on the bonds still outstanding in the hands of the public, and then to the redemption, after drawing by lot, of sufficient number of bonds to absorb the balance of the \$225,000.

Mr. TOWNSEND. I notice on page 16 of your report of December 31, 1903, the first item is: "Cost of road, real estate, and equipment, new terminals at La Boca being included in the same brackets, \$12,045,-258.32." Does that, Mr. Drake, represent the book value of the property of the Panama Railroad Company, including the new terminal at La Boca?

Mr. DRAKE. Yes, sir; everything charged to capital account.

Mr. TOWNSEND. From the beginning?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. You have not deducted anything nor made any allowances for depreciation?

Mr. DRAKE. No, sir. Not as depreciation, because we keep up our properties as we go along.

Mr. LOVERING. That \$12,000,000 does not mean all the money that has been put into necessary repairs and keeping up of property?

Mr. DRAKE. Not at all; it only represents what has been paid out for construction and plant and charged to capital account.

Mr. TOWNSEND. Your dividends are always declared on the basis of \$7,000,000 capital?

Mr. DRAKE. Yes, sir.

Mr. ESCH. Your book value includes the steamships?

Mr. DRAKE. Yes, sir. It is a separate item there.

Mr. ESCH. What do you estimate the three steamships to be valued at?

Mr. DRAKE. The three steamers were bought at a bargain and have been currently maintained ever since as a part of the operating expenses. The ships *Advance* and *Finance* are insured for \$200,000 apiece; that indicates what they are worth to us, but not, of course, what they would bring if offered for sale in open market. I can not tell precisely what they are worth, but I should say that those three ships to-day are worth \$750,000 to us.

Mr. VERNON H. BROWN. From \$600,000 to \$750,000 in my opinion.

Mr. ESCH. That includes the \$375,000 improvements put on them in the year?

Mr. BROWN. It includes their present condition. I would call attention to the fact that the Davis report puts them at \$583,000.

The CHAIRMAN. I will ask you one more question, Mr. Brown. What is your opinion of the adaptibility of these vessels to that particular trade, as to their size, capacity, and speed?

Mr. BROWN. They have answered every requirement admirably up to the present time.

The CHAIRMAN. Are they large enough?

Mr. BROWN. I will have to answer that by asking you a question. If the Government is going to double up the business here, if we must carry down the Government material, supplies, etc., in addition to the usual freight, we must have additional tonnage.

Mr. DRAKE. We paid \$234,000 last year to charter additional ships of the same kind for our line while our *Advance* and *Finance* were out of commission for reconstruction.

STATEMENT OF MR. VERNON H. BROWN,

A director in the Panama Railroad Company.

Sworn by the Chairman.

Mr. BROWN. Apropos of the inquiry that was recently made in regard to the future of the Panama Railroad, the future value of the railroad, it seems to me that when the canal is built that the Isthmus will then become of very much greater importance as a distributing point. You take all these nine lines of steamers that are running to Colon from various points in Europe, they are not loaded for any special port, they bring their cargo for the Pacific—some for the south Pacific, some for the north Pacific, some for China, Australia, Japan, wherever it may be, all in the same cargo. They would have to break bulk at Colon, for instance, and that cargo is distributed. You can not so well distribute that by canal as by railroad. Here may be a car for Valparaiso, another car for Callao, another car for up north, and so on for as many different points as you may choose to select. Those goods would naturally be loaded in the cars and go across and then be put aboard the ships for the various points for which they are destined. It seems to me that the value of that operation would enhance very much the value of the property, and very much increase the business.

The CHAIRMAN. Larger ships?

Mr. BROWN. If you had larger ships you could operate them to better advantage than the smaller ones, but having the ships, you can not afford to throw them away?

Mr. CROMWELL. Would you like to have the gross business done by the steamship and railroad company per annum?

Mr. ESCH. If you have it in concise form, yes.

Mr. TOWNSEND. What is the annual gross business of this company as conducted from the New York office?

Mr. DRAKE. Total earnings of our line, \$2,664,000 in 1903. The gross expense for the year was \$1,960,000. Earnings over expenses are about \$1,000,000, and of that sum about \$450,000 to \$500,000 is used in the discharge of fixed charges of the company, interest on bonds, subsidy, and redemption; and the balance of about \$500,000 is subject to distribution of dividends.

The CHAIRMAN. We thank you, gentlemen, for your courtesies.

Thereupon, at 4.50 o'clock p. m., the hearing was adjourned.

WASHINGTON, D. C., February 17, 1905.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

At the request of Mr. Shackelford, the chairman of the subcommittee having under consideration the affairs of the Panama Railroad, certain witnesses were this morning examined before the Committee on Interstate and Foreign Commerce instead of before the subcommittee.

STATEMENT OF MR. VERNON H. BROWN,

A director of the Panama Railroad Company.

Mr. SHACKLEFORD. You are one of the directors of the Panama Railroad Company?

Mr. BROWN. I am.

Mr. SHACKLEFORD. You were examined somewhat the other day, I believe, at the hearing before the subcommittee at the offices of the railroad in New York?

Mr. BROWN. Yes, sir.

Mr. SHACKLEFORD. Now, Mr. Brown, being as succinct as you can, we will take that feature of it first, and I would like to hear what you have to say about the line of ships that is operated in connection with the Panama Railroad?

Mr. BROWN. We esteem it of the greatest importance. It is the principal feeder of the line, and a very large proportion of the business originates at this end, and we have found from past experience that it was the only reliable source of supply in connection with the railroad.

Mr. SHACKLEFORD. Under the arrangements as they exist now, you have, I believe, a through bill of lading from New York to San Francisco?

Mr. BROWN. Yes, sir.

Mr. SHACKLEFORD. And other Pacific ports?

Mr. BROWN. Yes, sir. In regard to the traffic business, we have Mr. Walker here, our traffic manager, who will probably answer the traffic questions more clearly than I could do, but I am at your disposal for anything that you wish.

Mr. TOWNSEND. I understand, Mr. Brown, that the Panama Railroad Company has a contract or agreement with reference to the traffic in connection with the Pacific Mail Company?

Mr. BROWN. Yes, sir.

Mr. TOWNSEND. And, to say nothing about the notice that has been served upon them now, when would that contract terminate?

Mr. BROWN. I think it terminates in July.

Mr. SHACKLEFORD. You mean it terminates by notice in July, but by the terms of the contract it would terminate when?

Mr. BROWN. We were obliged to give six months' notice.

Mr. SHACKLEFORD. It would terminate in 1907, I believe, Mr. Townsend.

Mr. BROWN. Oh! I misunderstood your question.

Mr. SHACKLEFORD. By the terms of the contract it would terminate in 1907?

Mr. BROWN. Yes, sir.

Mr. ESCH. Let me give you the terms of the contract. According to article 21 of the agreement, we have this provision:

Subject to the provisions of a contemporaneous agreement between the parties hereto

The CHAIRMAN. What is the date of that?

Mr. ESCH. This is the contract of June 11, 1902.

Mr. SHACKLEFORD. Has either party exercised the election to continue the contract?

Mr. BROWN. The board of direction voted to give the notice of the termination of the contract.

Mr. SHACKLEFORD. The notice of the termination, but Mr. Esch read some clause there——

Mr. CROMWELL. The contract runs three years, by its terms, with the right to renew for two years more. It expires in June, 1905, subject to the right of renewal for two years, unless either party, upon six months' notice, terminates it before that time. The Panama Company has exercised that election and has given the notice, a notice which makes the contract expire on July 13, 1905.

Mr. SHACKLEFORD. The ship line heretofore has consisted of three ships, that belong to the company, and you have had some chartered. Are there any chartered now outside of those that are regularly owned by the company?

Mr. BROWN. We have one under a charter that runs for six months yet. We have one under contract, and two on which the contract has just run out. They were on time charters, so that we could cancel the charters at any time. We found it expedient to do so, and we have allowed two of them to run off recently, and the other has about six months to run.

Mr. SHACKLEFORD. Are these ships sufficient for the service between New York and the Isthmus?

Mr. BROWN. No, sir; we have not found it so.

Mr. SHACKLEFORD. Are there other lines engaged in the traffic?

Mr. BROWN. No, sir; no other lines. By saying "insufficient" I mean that we can not maintain the sailings with three ships. Whether large or small, we must have regular sailings, and we could not keep up the regular sailings with three ships.

Mr. SHACKLEFORD. Are there any other lines out of American ports on the Atlantic side that have the privilege of a through bill of lading on the Isthmus?

Mr. BROWN. That is a traffic question. The United Fruit Line is the only one.

Mr. SHACKLEFORD. I wanted to ask you the general question whether there are any other lines.

Mr. BROWN. Yes, sir; the United Fruit Line is the only one I know of.

Mr. SHACKLEFORD. There are no other ship lines that issue any through bills of lading?

Mr. BROWN. None that I am aware of.

Mr. SHACKLEFORD. Why is that? Is it because the railroad company has declined it, or is it because the other lines of ships have declined it?

Mr. BROWN. It has been the only regular line that has made any application, as I understand it.

Mr. SHACKLEFORD. Are there any other lines regularly between Colon and New York or between Colon and any other Atlantic or Gulf port?

Mr. BROWN. No, sir.

Mr. SHACKLEFORD. There are none?

Mr. BROWN. No, sir.

Mr. SHACKLEFORD. Have there been any other lines seeking to make connections with the Panama Railroad from any of these American ports?

Mr. BROWN. I do not know of any American line. Some of the foreign lines have made application.

Mr. SHACKLEFORD. From American ports?

Mr. BROWN. No, sir; I think they have really been running from American ports north, from Seattle, I think, down to Panama.

Mr. SHACKLEFORD. That was on the Pacific side; I was speaking of the Atlantic side.

Mr. BROWN. No, sir; nothing.

Mr. SHACKLEFORD. What I am trying to get at is this: Has the arrangement between the Panama Railroad and its own ships been one of exclusion?

Mr. BROWN. Practically, yes, sir.

Mr. SHACKLEFORD. Has it been the policy to exclude other ships than their own?

Mr. BROWN. It has not been the policy of the railroad to grant through bills of lading to any other line. We are very glad to have any business come there, however.

Mr. SHACKLEFORD. On the business that comes out of the port of New York going to Colon by other lines than your own, what have the rates charged on that by rail across the Isthmus, and by the Pacific Mail to other ports, been? Have they been higher or lower than that charged on your own line?

Mr. BROWN. That has been subject to the local rates.

Mr. SHACKLEFORD. Which would make it a higher rate?

Mr. BROWN. Which would make it a higher rate.

Mr. SHACKLEFORD. I am trying to derive the policy of the road from your testimony. On the Pacific side you have no ships now, but rely entirely on the contracts you have with the Pacific Mail and some other ship lines?

Mr. BROWN. Entirely upon traffic agreements.

Mr. SHACKLEFORD. Traffic agreements control that entirely?

Mr. BROWN. Yes, sir.

Mr. TOWNSEND. Have you made any different arrangement since the United States acquired a majority of the stock?

Mr. BROWN. No, sir.

Mr. TOWNSEND. You have the same arrangements now that you had prior to that time?

Mr. BROWN. Precisely.

Mr. TOWNSEND. Have you had any applications for the privilege of a through bill of lading by any other companies?

Mr. BROWN. That would not come before me unless it was brought before the board.

Mr. TOWNSEND. Do you know about that?

Mr. SHACKLEFORD. Mr. Drake, I presume, would know that.

Mr. TOWNSEND. I wanted to know whether you know that?

Mr. BROWN. I would have to refresh my memory a little before I could answer the question definitely.

Mr. TOWNSEND. I do not know of anything else that I wanted to ask of Mr. BROWN.

Mr. SHACKLEFORD. Mr. Brown, I will just ask you the general question, how would the value of the Panama Railroad be affected by discarding this ship line, which is now a part of its assets?

Mr. BROWN. I think that it would be affected very unfavorably.

Mr. SHACKLEFORD. To what extent?

Mr. BROWN. I think to the extent that it would be very difficult for it to—well, I think it would reduce its earnings very materially.

Mr. SHACKLEFORD. Discarding the ship line would have what effect on its operating expenses; would it pay them?

Mr. BROWN. No, sir; I do not think it would. It would not pay fixed charges. It certainly would not with the Pacific Mail on one side and these other lines on the other.

Mr. SHACKLEFORD. What is the reason of that?

Mr. BROWN. Because there the main feeder is this line.

Mr. STEVENS. Would not other ships be found to take their place?

Mr. BROWN. We do not think so. It has not been the case in previous experiments of that kind.

Mr. STEVENS. How long since there has been an opportunity for experiment?

Mr. BROWN. A few years ago; that is all on record. We gave the facts in New York last week, and you have the exact dates.

Mr. STEVENS. The coastwise laws do not apply to the traffic to the Isthmus?

Mr. BROWN. Not except on through trade. On through freight it would prohibit any foreign vessel from getting a through bill of lading. Of course you refer only to American points?

Mr. STEVENS. Yes, sir.

Mr. BROWN. Points where they have the flag? It would be impossible for foreign vessels to get through bills of lading?

Mr. STEVENS. And it is that through bill of lading that constitutes the principal value of those ships, and the principal freight that is carried goes on through bills of lading?

Mr. BROWN. Not necessarily. Foreign vessels of course would get a through bill of lading from foreign ports. The question is whether the Government having control of the railroad would be ready to enter into a commercial business, and prorate and give the through bill of lading. It could not be done from one American port to another.

Mr. SHACKLEFORD. Under the American flag?

Mr. BROWN. No, sir.

Mr. SHACKLEFORD. Are there no American lines that could compete in that line?

Mr. BROWN. I do not know what might turn up.

Mr. SHACKLEFORD. I mean, there are not now?

Mr. BROWN. No, sir.

Mr. SHACKLEFORD. You said to part with this line would depreciate the property very much?

Mr. BROWN. It would depreciate the property by reducing its earnings enormously.

Mr. ESCH. When were the three ships put on to the Atlantic in the company's service?

Mr. BROWN. In 1897.

Mr. SHACKLEFORD. Your contention now is that those ships ought to be retained in order that the company might make a dividend, or pay its fixed charges. Is it not a fact that prior to 1893 the company paid its fixed charges and dividends, and a fact that in one year it paid 34 per cent?

Mr. BROWN. Yes, sir.

Mr. ESCH. And then if the ships were taken off the service, or discontinued, might it not be possible still to continue to pay dividends, if it was possible prior to 1893?

Mr. BROWN. We had the connections prior to 1893 with the Pacific Mail.

Mr. ESCH. Of course you have the Pacific Mail now?

Mr. BROWN. That is only on the Pacific side, now. Previously we had it on both sides.

Mr. ESCH. On both sides?

Mr. BROWN. Yes, sir.

Mr. ESCH. That extended how far back?

Mr. BROWN. Twelve or fifteen years—to 1878.

Mr. ESCH. Twelve or fifteen years back?

Mr. BROWN. Yes, sir.

Mr. ESCH. Yet even prior to that time the company paid very considerable dividends, did it not?

Mr. BROWN. Yes, sir.

Mr. ESCH. Would it be possible to do that if the steamship line were discontinued?

Mr. BROWN. We do not think it would.

Mr. ESCH. You do not think it would?

Mr. BROWN. No, sir.

Mr. ESCH. Would it be possible to make dividends if you retained

the three ships on the Atlantic side and discontinued the contract with the Pacific Mail?

Mr. BROWN. It would disarrange the whole schedule. It depends altogether on what policy is to be adopted, and what is to be substituted for the Pacific Mail. Without some substitution, we still think that it would make a loss of business. In order to make a satisfactory and proper service, you must have one that is regular and efficient, and it can not be done by trusting to luck and taking your chances of having a ship here when you want it, or somewhere else. You must have regularity.

Mr. ESCH. Of course you have that now by requiring the Pacific Mail to make three trips a month?

Mr. BROWN. Yes, sir.

Mr. ESCH. And you make the same number of trips on the Atlantic?

Mr. BROWN. Yes, sir.

Mr. STEVENS. Do you know of any ships under the American flag that would be fitted for that service on the Atlantic side?

Mr. BROWN. I do not know of any available.

Mr. STEVENS. The number of ships under the flag is limited?

Mr. BROWN. Yes, sir.

Mr. LOVERING. What particular advantage has the Pacific Mail over any other possible connection on that side?

Mr. BROWN. They have a larger amount of tonnage at their disposal, and they run their business on business principles, and have had the experience in this trade of upward of fifty years. They have had upward of fifty years of this service. They have their agencies all along the coast and are fully equipped to carry out the contract.

Mr. LOVERING. Does the business that comes from the Panama Railroad constitute any very large proportion of the Pacific Mail business?

Mr. BROWN. I could not say what percentage it would be. I was just about to say that it was an important proportion; but Mr. Drake can answer that more definitely.

The CHAIRMAN. Mr. Brown, I would like to ask you if you said that the contract between the Panama Railroad Company and the Pacific Mail Steamship Company could be terminated after three years upon ninety days' notice?

Mr. BROWN. No, sir; the notice of termination has already been given.

The CHAIRMAN. Now, is that correct?

Mr. BROWN. That the notice has been given?

The CHAIRMAN. No, sir; but that either party may terminate that contract?

Mr. BROWN. Yes, sir; it is correct.

The CHAIRMAN. On the contrary, is it not true that the contract inures for three years, and may be continued for two more years at the request of either party?

Mr. BROWN. That is, assuming that the option of cancellation had not been availed of, which has been done.

The CHAIRMAN. Is there anything of that kind in there? Has not the Pacific Mail Company, under that stipulation, the right to continue that contract for two years?

Mr. WANGER (reading):

Subject to the provisions of a contemporaneous agreement between the parties thereto, of even date herewith.

Mr. BROWN. What is the date of that agreement? You will see that it is to terminate at the end of so many years—two or three years.

Mr. SHACKLEFORD. But I think you will find that there is no clause by which either party may terminate it on notice.

The CHAIRMAN. Will you read that, Mr. Wanger?

Mr. WANGER (reading):

Subject to the provisions of a contemporaneous agreement between the parties thereto, of even date herewith, this contract, except as herein otherwise expressly prescribed, shall remain in force for three years from the 11th day of June, 1902, and for the further period of two years if either party shall so elect, and if such party shall have given notice of such election to the other party at least ninety days before the expiration of the first term of three years.

The CHAIRMAN. Now, without some provision in the contemporaneous contract, I do not see how you will terminate that contract if the other party wants to continue it.

Mr. CROMWELL. Here is the contemporaneous contract to which that is made subject, which may not have been brought to your attention, Mr. Chairman [handing pamphlet to the chairman]. It is article 4.

The CHAIRMAN (after examination). This reads:

If at any time during the continuance of said traffic agreement, a majority of the shares of the railroad company or its railroad property shall be purchased or acquired by the United States of America, or by any person or persons representing it, or acting in its behalf, then either party hereto may give notice in writing to the other of its intention to terminate said traffic agreement, and at the expiration of six months from the giving of such notice the said traffic agreement and the previous articles of this agreement shall terminate, come to an end, and be utterly null and void thenceforth, anything in said traffic agreement or herein contained to the contrary notwithstanding.

Mr. BROWN. That is just the position, sir. That notice has been given.

The CHAIRMAN. Mr. Brown, I would like to ask you what is the total cost to the Panama Railroad Company of the maintenance of the offices in New York?

Mr. BROWN. That is a question that I can not answer offhand.

The CHAIRMAN. Approximate it.

Mr. BROWN. Well, I presume we have the figures here, but I will say that it is less than \$100,000.

The CHAIRMAN. Does that cover all of the expenses of the steamships and of the railroad?

Mr. BROWN. It covers all the expenses of the clerical force and office force, and such things. Of course it does not include the ships' officers or anything of that kind.

Mr. WANGER. And it does not include the salaries of the officers of the railroad company?

Mr. BROWN. I understand that is the whole amount.

The CHAIRMAN. What are the salaries paid the officers of the company in New York? What do they aggregate?

Mr. BROWN. I can not answer that.

The CHAIRMAN. I want to see how much the officers of this company know about the management of this business.

Mr. BROWN. Well, we have got quite a large number there, and it is impossible for me to carry all those figures in my mind.

The CHAIRMAN. Approximate it, if you please.

Mr. BROWN. I can not answer that question.

The CHAIRMAN. You can not answer it?

Mr. BROWN. No, sir.

The CHAIRMAN. Can you come within \$50,000 of it?

Mr. BROWN. Well, I do not care to guess about it, sir, at all.

The CHAIRMAN. What is your position in connection with the company?

Mr. BROWN. I am a director.

The CHAIRMAN. A director. What is your salary?

Mr. BROWN. None whatever.

The CHAIRMAN. You have no salary?

Mr. BROWN. No, sir.

The CHAIRMAN. No compensation?

Mr. BROWN. Director's fees.

The CHAIRMAN. Oh! What are the director's fees?

Mr. BROWN. The director's fees are \$25 a meeting attended; executive committee fees, \$10 a meeting attended.

The CHAIRMAN. How many meetings are there in a year?

Mr. BROWN. Well, the executive committee meets twice a week.

The CHAIRMAN. Twice a week?

Mr. BROWN. The board meetings are twice a month.

The CHAIRMAN. Then there are 24, and 104 meetings a year?

Mr. BROWN. Yes, sir.

The CHAIRMAN. At \$10 a meeting?

Mr. BROWN. Yes, sir. The board meetings, twice a month, are \$25.

The CHAIRMAN. \$25?

Mr. BROWN. Yes, sir. Those are the directors' meetings.

The CHAIRMAN. That does not amount to such a sum as might be designated "salary," in your judgment?

Mr. BROWN. No, sir; it does not. It is only paid in case you are there. If anything happens so that you do not go, you do not get the fee.

The CHAIRMAN. Are the meetings pretty generally full—fully attended, I mean?

Mr. BROWN. They are reasonably so.

The CHAIRMAN. What other salaries are paid there in the city of New York?

Mr. BROWN. In other corporations?

The CHAIRMAN. No sir; in this one.

Mr. BROWN. That is the only one I know of, sir. There is no other emolument that I know of, in any way, shape, or manner to directors.

The CHAIRMAN. Have you not salaried officers in connection with the railroad?

Mr. BROWN. Yes, sir; there are some salaried officers. There is the president.

The CHAIRMAN. What is his salary?

Mr. BROWN. We can give you the exact figures here.

The CHAIRMAN. Do you know or do you not know?

Mr. BROWN. Yes, sir; I know.

The CHAIRMAN. What is his salary?

Mr. BROWN. \$10,000.

The CHAIRMAN. What other officers get salaries?

Mr. BROWN. There is the vice-president and secretary.

The CHAIRMAN. What is the salary of the vice-president?

Mr. BROWN. Well, about \$8,000. I will not be sure whether it is \$500 more or less.

The CHAIRMAN. What is the salary of the secretary?

Mr. BROWN. That is embodied with that of vice-president. I referred to the two together.

The CHAIRMAN. The two offices are filled by one man?

Mr. BROWN. Yes, sir.

The CHAIRMAN. Are there any other salaried officers?

Mr. BROWN. The heads of all the departments. There are the auditor and the treasurer and the traffic manager and the purchasing agents and various others.

The CHAIRMAN. Can you approximate what they aggregate?

Mr. BROWN. I could not answer without a list of the names. I did not expect to be questioned on that, and I have had no occasion recently to look up the matter, and I could not say offhand.

The CHAIRMAN. What change has been made in the salaries of any of these officers in recent years?

Mr. BROWN. I do not know, sir, that there has been any change at all.

The CHAIRMAN. It is the same. Is it not true that the expense account paid by the Panama Railroad last year in the city of New York—its business there—all of it, steamship and railroad, aggregated about \$200,000?

Mr. BROWN. I would like to have the stenographer read that question.

(The question was repeated by the stenographer.)

Mr. BROWN. I would like to know what is included in "expense account."

The CHAIRMAN. You take your definition of it.

Mr. BROWN. I have already stated that the expenses of the office were, to the best of my recollection, within \$100,000. That includes all clerical expenses. The disbursements of the ships and their supplies are separate.

The CHAIRMAN. What was the total expense paid out there. I mean in the city of New York, last year?

Mr. BROWN. You mean including dockage and cost of piers and cost of wharves?

The CHAIRMAN. Yes, sir; anything.

Mr. BROWN. I can not answer that.

The CHAIRMAN. Can you approximate it?

Mr. BROWN. No, sir; I can not.

The CHAIRMAN. Was it in excess of \$200,000?

Mr. BROWN. I can not say.

The CHAIRMAN. What percentage of the gross receipts of the Panama Railroad Company last year was expended for salaries, office rent, and similar expenses in the city of New York?

Mr. BROWN. I can not answer that question offhand.

The CHAIRMAN. Can you approximate it?

Mr. BROWN. No, sir.

The CHAIRMAN. Are you a member of the executive committee?

Mr. BROWN. I have been; yes, sir.

Mr. TOWNSEND. Are you not now?

Mr. BROWN. Yes, sir.

The CHAIRMAN. What were the gross receipts of the Panama Railroad Company last year?

Mr. BROWN. I do not carry those figures in my mind, sir, and it is impossible for me to answer any such questions. As I say, I have been connected with business elsewhere. I am, and for many years have been, the New York representative of the Cunard Steamship Company, and I am not one of the managing officers of the Panama Railroad Company; and those who can give you those things are here prepared to do so, and I am not prepared to answer.

The CHAIRMAN. What was the gross amount of fees—you speak of them as fees—received by you from the Panama Railroad Company last year?

Mr. BROWN. I do not know. I should say, offhand, something less than \$1,000, or about \$1,000.

The CHAIRMAN. How many directors and members of the executive committee were there last year?

Mr. BROWN. There were 5 members of the executive committee last year, and the full number of the members of the board is 13.

The CHAIRMAN. How many?

Mr. BROWN. Thirteen.

The CHAIRMAN. All of the members of the executive committee are members of the board are they?

Mr. BROWN. Yes, sir.

Mr. SHACKLEFORD. How many of the Canal Commission were on that executive committee?

Mr. BROWN. One; Mr. Parsons.

Mr. TOWNSEND. Did the members of the Canal Commission get the same fees that you did?

Mr. BROWN. I presume so. I was not the paymaster. I presume they were all paid the same.

Mr. Brown continued his testimony in a supplemental statement, which the subcommittee placed in the record, as follows:

[Panama Railroad Company. Panama Railroad. Panama Railroad Steamship Line.]

NEW YORK, February 20, 1905.

Hon. D. W. SHACKLEFORD,

*Chairman Subcommittee Panama Inquiry,
Washington, D. C.*

DEAR SIR: In accordance with your request I submit my views regarding maintenance of the steamship line between New York and the Isthmus of Panama, in connection with the railroad.

I will say at the start that I strongly advocate a continuance of the present system of regular sailings, and a through connection with San Francisco and intermediate ports on the Pacific coast.

First. The steamship line is an important feeder to the railroad, and its withdrawal would mean a serious loss in revenue.

Second. The withdrawal of the line and substitution of steamers by independent parties would inevitably induce higher freight rates, as it is hardly to be expected outside interests would be content with the present percentage allowed by the railroad for sea transportation.

With 46 miles of land carriage against nearly 2,000 miles by sea, the demand for a larger percentage than now exists would not seem unreasonable.

This would mean reduced earnings for the railroad and increased freight rates to shippers, and the enormous amount of material, laborers, etc., to meet requirements of the Canal Commission would make the Government the heaviest sufferer.

Third. The irregularities and uncertainties of a disconnected service would tend to discourage all shipments via the Isthmus for points beyond, and force shippers to avail of the transcontinental railroads even at materially higher rates, as reliability, regularity, and dispatch are absolute essentials with all transportation companies.

Fourth. The through route to San Francisco via the Isthmus is the only check and regulator upon transcontinental rates, in corroboration of which statement you have only to refer to the past records and agreements between those lines and the Panama Railroad Company, as explained to you when in New York.

Fifth. Cancellation of existing agreement with Pacific Mail Steamship Company, discontinuing its service from Panama north to San Francisco, I think, will prove a mistaken policy. My views on this point are based upon the experience with which you are familiar through the recent inquiries and investigations of your committee at the company's offices in New York, when the failure of the "open-door policy" and the attempt to substitute outside ships for a thoroughly equipped and well-managed line were shown to have resulted in disaster and the practical bankruptcy of some of the parties interested.

The only possible adverse criticism which the Government can make to the Pacific Mail agreement is its exclusiveness; but without this, neither the Pacific Mail nor any other steamship line was willing to concede to the Panama Railroad Company the arbitrary fixing of rates which it was so manifestly in the interest of the railroad to control.

In this connection I would remind you that the agreement authorizes the railroad to practically fix all through rates, both east and west bound, which is really the key to the situation as a regulator of transcontinental rates.

Sixth. With the withdrawal of its regular and reliable feeders, the revenue of the Panama railroad would be so largely impaired that its ability to pay dividends or even fixed charges might reasonably be questioned.

Seventh. The suggestion to transfer the company's headquarters from New York to the Isthmus would, in my judgment, be a most unwise proceeding. New York is the great center of business, and if the steamship connection is to be maintained the advantages of New York are too conspicuous to require any argument. Here all business emanates, all contracts are made, ships outfitted and repaired, and this is the natural base of operations.

Very respectfully, yours,

VERNON H. BROWN.

STATEMENT OF MR. EDWARD A. DRAKE—Continued.

Vice-president and secretary of the Panama Railroad Company.

MR. TOWNSEND. I think you testified the other day that you were the vice-president and secretary of the Panama Railroad Company?

MR. DRAKE. Yes, sir.

MR. TOWNSEND. And that you had become vice-president on account of the resignation of Mr. Whaley, who was vice-president?

MR. DRAKE. Yes, sir.

MR. TOWNSEND. You were going to give me the other day the date of his resignation.

MR. DRAKE. It was September 13, 1904.

MR. TOWNSEND. And since then you have acted as vice-president and secretary?

MR. DRAKE. I had acted as vice-president and secretary for a short time before the beginning of the year. Mr. Whaley had retained his directorship, but had resigned as vice-president.

MR. TOWNSEND. He was acting as vice-president with special reference to the tariff end of the business?

MR. DRAKE. He had been a member of the board for many years.

MR. TOWNSEND. Did you not testify, or somebody, that his duties as vice-president were to look especially after the interests of the Paris stockholders?

MR. DRAKE. No, sir; I did not so testify.

MR. TOWNSEND. Who did?

MR. DRAKE. I do not know. Mr. Whaley was a very prominent engineer, who had been elected by the board as vice-president and general manager in 1895. He was particularly well qualified for the post. He visited the Isthmus regularly annually, and had entire charge of the care and operation of the property; and because of his familiarity with the language, being a polyglot, and being a man of large experience of railroad affairs and engineering, he looked after the affairs of the company both at home and abroad—in Europe. He attended the conferences abroad, being a man of sufficient ability to adequately represent the large interests involved in the company, and he was elected to his position on that account.

MR. TOWNSEND. Mr. Simmons is the president, is he?

MR. DRAKE. Yes, sir.

MR. TOWNSEND. I asked him these questions, and he answered at a former session, as I will read:

MR. TOWNSEND. Mr. Simmons, can you tell me what duties the first vice-president performed prior to Mr. Whaley's resignation?

MR. DRAKE. At the time Mr. Whaley was elected he was recommended to us very strongly, and among his recommendations were those of the principal shareholders, who were the French company.

MR. TOWNSEND. Did he not state that the reason he resigned was because the Paris company had parted with its holdings, and there was no further need for him?

MR. DRAKE. He had contemplated resigning for some time before he did, and when there was an entire change of ownership and an entire severance with the French company he resigned. He did not

resign at once, but remained as a director for some time, and then resigned.

Mr. TOWNSEND. What has been your compensation—I think you have answered this once, but for the satisfaction of the committee I will ask you again—as secretary, prior to your assuming the duties of vice-president?

Mr. DRAKE. I had acted as assistant general manager and secretary, and my salary was \$7,000. At the time of Mr. Whaley's resignation I was second vice-president and secretary, and my salary was \$8,500.

Mr. TOWNSEND. What is your salary now?

Mr. DRAKE. \$8,500, in the combined position of vice-president and secretary. It was not increased when Mr. Whaley resigned. I am the managing officer of the company to-day, under the direction of the president and executive committee.

Mr. TOWNSEND. Is Mr. Cromwell one of them?

Mr. DRAKE. His law firm, Messrs. Sullivan & Cromwell, are general counsel of the company.

Mr. TOWNSEND. Has he a salary?

Mr. DRAKE. He has an annual retainer, as is customary.

Mr. TOWNSEND. Of how much?

Mr. DRAKE. \$6,000 a year.

Mr. TOWNSEND. Does he have any compensation besides that?

Mr. DRAKE. We have, very infrequently, had to fall back on a provision for other services of a legal nature whenever we have had occasion to have our counsel represent us in court, when they have had to try causes, argue cases, and especial service of that sort. There is a provision that counsel should receive additional compensation in such case only—suits in court.

Mr. TOWNSEND. Can you tell what compensation he has received since April, 1902? Your reports, I believe, are to the end of the calendar year?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Since December 31, 1901, then?

Mr. DRAKE. Nothing above his \$6,000, except in one large suit in an English court about \$3,000 and in a suit securing to us title to bonds about \$2,500. There have been no other cases, and we have had no other pleadings in court. It is a general retainer that we pay the firm to cover all current work. I can tell by reference to the documents. It would be almost impossible without so doing for me to subdivide. I can tell you without looking at any documents, though, that there has been nothing

Mr. TOWNSEND. How can you tell?

Mr. DRAKE. There is nothing to indicate that he received anything more than his annual retainer other than I have indicated. There are small cases of course arising continually, on which there are incidental expenses; for instance, expenses of the steamship line, of the piers, and suits for damages and adjustments that are chargeable to legal expenses. The expenses themselves are all charged in our subdivision of accounts to "legal expenses," so that while, if I were to state the amount of \$10,000 which appears here it would indicate that it had been all paid to Mr. Cromwell's firm, while as a matter of fact it has not. I am safe in saying that the firm of Mr. Cromwell has received in three years not exceeding two thousand a year for

extra service regularly reported and on our files. The general item includes attorneys on the isthmus and our attorneys at Bogota.

Mr. TOWNSEND. You spoke of incidental expenses?

Mr. DRAKE. That includes the cost of telegraphing or typewriting, and expenses incidental to settlement of suits, and he received, of course, the attendance fee of \$25 a meeting for attending directors' meetings.

Mr. TOWNSEND. That is for his attendance at meetings?

Mr. DRAKE. Yes, sir; whenever he attends.

Mr. TOWNSEND. He is a member of the executive committee?

Mr. DRAKE. Of the executive committee and of the board.

Mr. TOWNSEND. Did Mr. Simmons, who was president, receive also an additional fee for his attendance on meetings?

Mr. DRAKE. Yes, sir; he did.

Mr. TOWNSEND. In addition to his salary?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. So that if he had attended them all he would have received \$1,640 per annum?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Do you know whether he did receive that or not?

Mr. DRAKE. I do not know just what he received. We have in this summary a lump sum charged to committee and board fees. He was very regular in his attendance—seldom absent, as the records show.

Mr. TOWNSEND. Did you keep an accurate account of these?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Can you give them?

Mr. DRAKE. The treasurer can. That is, a detailed account. The directors' and committee fees account in 1904 is \$8,920 for 11 months to November 30. That is the total amount expended for directors.

The CHAIRMAN. Is not that the uniform charge for every member of the directory?

Mr. DRAKE. No, sir.

The CHAIRMAN. Do not they get their fees whether they attend or not, and is not that the aggregate, the total, of the fees for attendance?

Mr. DRAKE. No, sir; they do not get their fees unless they attend.

The CHAIRMAN. Will you now turn to your report there and show what sum was paid to each one?

Mr. DRAKE. I could not do that. That would be shown by the vouchers and by the roll book.

Mr. RICHARDSON. You mean to say that they only got their fees when they attended?

Mr. DRAKE. Only when they attended. It is customary with some corporations to disburse the entire amount involved in fees for meetings of their executive committee, and to distribute it pro rata to those who attend, but that is not our custom.

Mr. RICHARDSON. Do they usually attend?

Mr. DRAKE. The attendance is fair and regular.

Mr. TOWNSEND. I think you answered the question, but what was the total amount paid?

Mr. DRAKE. For the 11 months of 1904 it was \$8,920. I do not know what proportion of that sum should be divided between attendance of directors and the attendance of members of the executive committee. The committee consists of six and the board consists of 13 members.

Mr. TOWNSEND. Do you know how much it would have amounted to if they had each drawn \$1,640 a year, the largest possible amount?

Mr. DRAKE. It would be \$18,440.

Mr. TOWNSEND. So that they did not all draw their full amount?

Mr. DRAKE. Oh, no, sir. There is always a quorum present to attend the meetings of the board, and it frequently occurs that the entire board is present. There is almost always in excess of a quorum present at meetings of both the board and the committee. A quorum of the board is 5 and of the committee 3. There is almost always an attendance of four of the committee and very frequently of all of them, but rarely of all.

Mr. TOWNSEND. I will ask you, as Mr. Brown did not seem to know for sure, whether these canal commissioners who were acting as directors received the \$25 a time for attending meetings of the board?

Mr. DRAKE. They did, sir. When they attended the first meeting after their election there was some hesitancy about accepting it. In fact, one director filed with us a letter, saying that he believed in the restriction—or rather that, under his construction of the President's letter, he was not entitled to receive it.

Mr. TOWNSEND. Which one was that?

Mr. DRAKE. Mr. Gunsby. Later on—I do not know that it is proper for me to say this—upon an appeal to a ruling power, it was decided that the intention of that letter was not to invade the practices of the railroad company, and that they were entitled to receive the fees which were disbursed customarily. In fact, it would have been invidious not to pay them. It would have raised the question as to whether any of the directors should receive their fees.

Mr. MANN. We know usually what we refer to when we say “a ruling power;” in this case what was this power?

Mr. DRAKE. I do not know, sir.

Mr. MANN. How do you know that it was “a ruling power?”

Mr. DRAKE. It was decided that they could accept their fees, and from that time they have done so regularly.

Mr. TOWNSEND. Now, you were going to analyze the item on page 17 of your annual report. Those items are all about the same. I refer to the 1903 one in particular. I think they are paged in the same way. This is on page 17 of the annual report to the stockholders by the Panama Railroad Company, dated as of December 31, 1903. It shows a balance to the credit of profit and loss of \$4,191,929.91. You were going to analyze that proposition for us, so that we would understand what was included in that item.

Mr. DRAKE. Yes, sir; agreeably to your request made at the New York session, the treasurer has prepared the exhibits you desired and has certified to them. They are as follows: (1) Analysis of balance sheet as of December 31, 1902; (2) analysis of balance sheet as of December 31, 1903; (3) statement showing additions to property or capital expenditures paid for out of net earnings as of 1903.

In addition to these the treasurer has prepared and certified as your committee requested: (4) Condensed statement of profit and loss account from December 31, 1896, to December 31, 1902, showing the balance December 31, 1902, of \$4,201,587.09; (5) condensed statement of same account from December 31, 1896, to December 31, 1903, showing the balance of \$4,191,929.91.

The CHAIRMAN. These will be marked as Exhibits 8 to 14, inclusive.

EXHIBIT 8-9.

Analysis of balance sheet of the Panama Railroad Company, December 31, 1902.

ASSETS.

Current assets:

Coal and supplies on hand.....	\$187,682.74	
Due from connecting companies.....	123,949.27	
Due from United States Government.....	21,025.15	
Due from Republic of Colombia.....	21,367.21	
Due from companies and individuals.....	55,279.95	
Accrued interest on deposits.....	6,877.06	
Accrued interest on securities owned.....	2,047.50	
Unadjusted accounts.....	79,515.71	
Prepaid insurance and charter of steamers.....	19,506.27	
		<u>\$517,050.86</u>

LIABILITIES.

Accrued interest on bonds.....	37,332.50	
Fund for redemption of bonds.....	137,625.85	
Due Republic of Colombia.....	21,875.00	
Allowance to cover excess interest over contract rate on 4½ per cent bonds sold to prepay indebtedness due the contractors for new terminal at La Boca on October 15, 1905.....	39,386.44	
Current liabilities:		
Isthmus drafts not presented.....	13,591.11	
Coupons not presented.....	7,247.50	
Audited vouchers.....	53,632.21	
Unclaimed dividends.....	117.00	
Due deceased or missing employees.....	2,230.70	
		<u>313,038.31</u>
Balance due Panama Railroad Company.....	204,012.55	
Improvement and construction accounts.....	114,456.98	
Fund for replacement of boilers and special repairs to tugs.....	22,544.88	
Cash in banks and with agents.....	471,525.50	
Investment of surplus earnings:		
Additions to property paid out for earnings as per statement.....	\$1,627,604.44	
Bonds in treasury purchased out of earnings.....	203,037.50	
		<u>1,830,641.94</u>
Cost of road and equipment.....	12,572,009.68	
Less additions to property paid for out of earnings.....	1,627,604.44	
		<u>10,944,405.24</u>
Bonds and stock amount to.....	\$10,299,000.00	
Less bonds in treasury (unissued).....	913,000.00	
		<u>9,386,000.00</u>
		<u>1,558,405.24</u>
Balance to credit of profit and loss.....		<u>4,201,587.09</u>

SUMMARY.

Balance of assets and liabilities due Panama Railroad Company.....	204,012.55	
Suspense accounts, in process of transfer to operating expenses:		
Improvement and construction accounts.....	\$114,456.98	
Fund for replacement of boilers and special repairs to tugs.....	22,544.88	
		<u>137,001.86</u>
Cash in banks and with agents.....	471,525.50	
Investment of surplus earnings.....	1,830,641.94	
Cost of road and equipment in excess of bonds and stock issued.....	1,558,405.24	
		<u>4,201,587.09</u>
Cash in banks and with agents, as stated above.....		<u>471,525.50</u>

The source from whence this cash was derived is as follows: From receipts for transportation of freight, treasure, mails, baggage, and passengers; from interest and exchange, lighterage, water supplied shipping, rental of property, wharfage and light dues at Colon, wharfage at Panama and La Boca, storage and freight handling, telegraph, ballast, etc.; from sale of coal and supplies and work done at machine shops for the public.

S. DEMING, *Treasurer.*

FEBRUARY 17, 1905.

EXHIBIT 10.

Statement showing additions to property or capital expenditures paid for out of net earnings.

1895. Steamers <i>Allianca, Finance, and Advance</i>	\$336,655.50
1896. Two steel lighters.....	24,393.35
1896. Land at Bohio.....	2,500.00
1896-97. Water tank and pipes to connect Monkey Hill reservoir..	3,464.81
1897. Installation of electric plants, providing new staterooms, and other additions on steamers mentioned above.....	33,513.77
1898. New floating pile driver.....	7,428.03
1901. Electric-light plant, Colon.....	10,055.19
1901. Ice-making plant, Colon.....	6,792.70
1901. Dredging attachment for floating pile driver.....	1,083.34
1901-2. New tracks, Colon yard.....	12,462.48
1901-2. Improvements to pier No. 2, Colon.....	12,313.53
1901-2. Three new coal lighters.....	36,342.40
1897-1902. New terminal at La Boca.....	\$2,220,357.13
Less provided by disposal of bonds.....	1,087,000.00
	1,333,357.13
1902. Filling lagoon north of pier No. 1, Colon.....	4,100.73
1902. Tank at Pedro Miguel.....	3,141.48
	1,627,604.44

FEBRUARY 17, 1905.

S. DEMING, *Treasurer.*

EXHIBIT 11-12.

Analysis of balance sheet of the Panama Railroad Company, December 31, 1903.

ASSETS.

Current assets:

Coal and supplies on hand.....	\$176,412.86
Due from connecting companies.....	108,060.58
Due from United States Government.....	24,437.16
Due from Republic of Colombia.....	4,990.93
Due from companies and individuals.....	48,078.50
Accrued interest on deposits.....	13,682.96
Accrued interest on securities owned.....	1,777.50
Unadjusted accounts.....	12,513.33
Prepaid insurance and charter of steamers.....	17,595.93
	\$407,558.75

LIABILITIES.

Accrued interest on bonds.....	34,137.50
Fund for redemption of bonds.....	138,951.78
Due Republic of Panama.....	21,875.00
Allowance to cover excess interest over contract rate on 4½ per cent bonds sold to prepay indebtedness due the contractors for new terminal at La Boca on October 15, 1905.....	26,061.95

Current liabilities:

Isthmus drafts not presented	\$11,100.95	
Coupons not presented	1,562.50	
Audited vouchers	97,941.51	
Unclaimed dividends	119.00	
Due deceased or missing employees	2,199.02	
		<u>\$833,949.21</u>

Balance due Panama Railroad Company	73,609.54	
Improvement and construction accounts	55,570.50	
Fund for replacement of boilers and special repairs to tugs	34,002.59	
Cash on hand	469,994.66	

Investment of surplus earnings:

Additions to property paid for out of earnings,		
as per statement	\$1,627,604.44	
Bonds in treasury purchased out of earnings ..	176,037.50	
		<u>1,803,641.94</u>

Cost of road and equipment	12,628,715.12	
Less additions to property paid for out of earnings ..	1,627,604.44	

	11,001,110.68	
Bonds and stock amount to	\$10,159,000.00	
Less bonds in treasury (unissued) ..	913,000.00	
	<u>9,246,000.00</u>	
		<u>1,755,110.68</u>

Balance to credit of profit and loss	<u>4,191,929.91</u>
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SUMMARY.

Balance of assets and liabilities due Panama Railroad Company ..	\$73,609.54	
Suspense accounts, in process of transfer to operating expenses:		
Improvement and construction accounts	\$55,570.50	
Fund for replacement of boilers and special repairs to tugs	34,002.59	
		<u>\$9,573.09</u>
Cash in banks and with agents	469,994.66	
Investment of surplus earnings	1,803,641.94	
Cost of road and equipment in excess of bonds and stock issued ..	1,755,110.68	
		<u>Total</u>
		<u>4,191,929.91</u>

Cash in banks and with agents, as stated above	469,994.66
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The source from which this cash was derived is as follows: From receipts for transportation of freight, treasure, mails, baggage, and passengers; from interest and exchange, lighterage, water supplied shipping, rental of property, wharfage and light dues at Colon, wharfage at Panama and La Boca, storage and freight handling, telegraph, ballast, etc.; from sale of coal and supplies and work done at machine shops for the public.

S. DEMING, *Treasurer.*

FEBRUARY 17, 1905.

EXHIBIT 13.

PANAMA RAILROAD COMPANY.

Condensed statement of profit and loss account from December 31, 1896, to December 31, 1902.

Balance to credit of profit and loss December 31, 1896..... \$587,465.79

CREDITS.

Balance to credit of voluntary sinking fund October 10, 1897, transferred to this account, and which was applied as follows:

693 general mortgage 7 per cent bonds due October 10, 1897, acquired by purchase, canceled by trustees..... \$693,000.00

Balance required in addition to proceeds of sale of 2,000 $4\frac{1}{2}$ per cent first-mortgage bonds to retire 2,686 general mortgage 7 per cent bonds outstanding in hands of public, due October 10, 1897..... 705,088.34

312 6 per cent sinking-fund bonds transferred to the treasury..... 312,000.00

1,710,088.34

Net earnings, less dividends paid:

Earnings for 1897..... 409,873.37

Earnings for 1898..... 266,746.73

Earnings for 1899..... 295,231.77

Earnings for 1900..... 446,764.68

Earnings for 1901..... 259,590.12

Earnings for 1902..... 295,384.40

1,973,591.07

Less dividends:

1901, 2 per cent..... \$140,000.00

1902, 4 per cent..... 280,000.00

420,000.00

1,553,591.07

First mortgage $4\frac{1}{2}$ per cent bonds redeemed and canceled:

October 1, 1898, 141 bonds..... 141,000.00

October 1, 1899, 140 bonds..... 140,000.00

October 1, 1900, 139 bonds..... 139,000.00

October 1, 1901, 141 bonds..... 141,000.00

October 1, 1902, 140 bonds..... 140,000.00

701,000.00

4,552,145.20

DEBITS.

Worn-out equipment (less value of usable parts), viz, locomotives, cars, lighters, and water boat written off 1897-1902..... \$253,509.88

Expenses incident to the retirement of the general mortgage, 7 per cent bonds, due October 10, 1897, and the issuance of the first mortgage, $4\frac{1}{2}$ per cent bonds replacing the former in part..... 27,128.13

Uncollectible accounts written off and adjustment of sundry accounts, 1897-1902, net..... 69,920.60

350,558.11

Balance to credit of profit and loss December 31, 1902..... 4,201,587.90

S. DEMING, *Treasurer.*

FEBRUARY, 17, 1905.

EXHIBIT 14.

PANAMA RAILROAD COMPANY.

Condensed statement of profit and loss account from December 31, 1896, to December 31, 1903.

Balance to credit of profit and loss December 31, 1896----- \$587, 465. 79

CREDITS.

Balance to credit of voluntary sinking fund October 10, 1897, transferred to this account, and which was applied as follows:

693 general mortgage 7 per cent bonds, due October 10, 1897, acquired by purchase, canceled by trustees----- \$693, 000. 00

Balance required in addition to proceeds sale of 2,000 4½ per cent first mortgage bonds to retire 2,686 general mortgage 7 per cent bonds outstanding in hands of public, due October 10, 1897----- 705, 088. 34

312 6 per cent sinking fund bonds transferred to the Treasury----- 312, 000. 00

1, 710, 088. 34

Net earnings, less dividends paid:

Earnings for 1897----- 409, 873. 37
Earnings for 1898----- 260, 746. 73
Earnings for 1899----- 295, 231. 77
Earnings for 1900----- 446, 764. 68
Earnings for 1901----- 259, 590. 12
Earnings for 1902----- 295, 384. 40
Earnings for 1903----- 401, 068. 30

2, 374, 659. 37

Less dividends:

1901, 2 per cent----- \$140, 000
1902, 4 per cent----- 280, 000
1903, 8 per cent----- 560, 000

980, 000. 00

1, 394, 659. 37

First mortgage 4½ per cent bonds redeemed and canceled:

October 1, 1898, 141 bonds----- 141, 000. 00
October 1, 1899, 140 bonds----- 140, 000. 00
October 1, 1900, 139 bonds----- 139, 000. 00
October 1, 1901, 141 bonds----- 141, 000. 00
October 1, 1902, 140 bonds----- 140, 000. 00
October 1, 1903, 140 bonds----- 140, 000. 00

841, 000. 00

4, 533, 213. 50

DEBITS.

Worn out equipment (less value of usable parts), viz: Locomotives, cars, lighters, and water boat, written off 1897-1903-----

252, 969. 38

Expenses incident to the retirement of the general mortgage 7 per cent bonds due October 10, 1897, and the issuance of the first mortgage 4½ per cent bonds replacing the former in part-----

27, 128. 13

Uncollectable accounts written off and adjustment of sundry accounts, 1897-1903, net-----

61, 186. 08

341, 283. 59

Balance to credit of profit and loss December 31, 1903-----

4, 191, 929. 91

S. DEMING, Treasurer.

FEBRUARY 17, 1905.

Mr. TOWNSEND. Before we reach this analysis, and in connection with it, Mr. Drake, I will ask you this: When you paid the dividends for 1902 to the stockholders of the company, did you sell or reissue any of the bonds which were being held in the treasury up to that time?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Did you have cash in sufficient amount to pay that dividend?

Mr. DRAKE. Yes, sir. It was paid out of current cash.

Mr. TOWNSEND. What?

Mr. DRAKE. It was paid out of current cash.

Mr. TOWNSEND. You have not issued any bonds, as I understand you, of any character since 1897?

Mr. DRAKE. No. There was only one issue of the bonds, the first mortgage 4½ per cent bonds. There was an authorization for the issue of 4,000.

Mr. TOWNSEND. Four thousand or four million?

Mr. DRAKE. Four thousand \$1,000 bonds, amounting to \$4,000,000.

Mr. SHACKLEFORD. The current cash out of which you paid the dividends was cash that had been derived from the sale of the bonds of the company?

Mr. DRAKE. You will see from the schedule I have presented that we could not have paid dividends with proceeds of bonds, for we state specifically how we otherwise disposed of those proceeds. Here is the schedule: "Current cash" is the general receptable for cash from all sources. For instance, the Panama Railroad Company had night before last, when I left the office, \$500,000 in cash, in addition to its free bonds, \$773,000.

EXHIBIT 6 J.

Memorandum concerning sale of 4 1-2 per cent bonds.

How issued or disposed of:

Bonds sold to retire 7 per cent bonds and proceeds so applied.....	2,000
Bonds sold account La Boca wharf and proceeds so applied.....	1,087
Bonds sold account rebuilding ships and proceeds so applied.....	265
Bonds balance in hand (one since called and redeemed).....	648

Total authorized issue 4,000

Present standing or location of bonds:

Bonds in hands of public.....	2,372
Bonds redeemed by trustees.....	981
Bonds in Treasury by purchase.....	621
Bonds in treasury.....	626

Total authorized issue..... 4,000

Mr. SHACKLEFORD. In that fund of current cash was contained money received from bonds issued to build that wharf? There was an excess of cash over and above the cost of building the Boca wharf extension, and that was a part of the cash out of which you paid a dividend?

* 22 of these were drawn by the trustees for redemption October 1, 1904, thus leaving 626 unissued bonds in treasury, as per following statement:

647,000.

Mr. DRAKE. It was an excess (\$119,000) of proceeds from the sale of bonds sold to provide money to pay the contractor. That was covered into "cash," naturally, because the bonds represented the earnings that had been used for construction, and the 119,000 was passed into cash.

Mr. ESCH. Did you not issue \$265,000 for the repair of the steamers?

Mr. DRAKE. I spoke of an authorized issue of 4,000. The emission up to that total has continued at various times and includes 265 bonds issued for the rebuilding of the steamers.

Mr. SHACKLEFORD. How much was that?

Mr. DRAKE. Four thousand bonds, or \$4,000,000, which replaced the 4,000,000 sterling 7 per cent loan.

Mr. SHACKLEFORD. Of the outstanding bonds against the company, how many are there?

Mr. DRAKE. Of the outstanding bonds against the company, 2,372, \$2,372,000.

Mr. SHACKLEFORD. They go to make this credit to profit and loss?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Can you turn to that page there to which I have referred?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Will you please analyze that proposition for us, and tell us what that balance of \$4,191,929.91 is composed of?

Mr. DRAKE. It is made up of the—

Mr. TOWNSEND. What page are you reading from?

Mr. DRAKE. From page 13 of one of the exhibits. At the time of the redemption of the 7 per cent sterling bonds the company applied \$705,000 cash as a contribution to the redemption of the outstanding mortgage. There were something like \$3,000,000 of bonds outstanding, and they had to be redeemed.

In anticipation of the maturing of that debt, the company, which has always been extremely conservative, had voluntarily provided a sinking fund, and had piled up liquid assets to meet that indebtedness; and, in addition, 2,000 of the 4,000 4½ per cent bonds authorized were sold, and from that sale the company contributed sufficient to exterminate that indebtedness, to redeem and cancel the outstanding bonds. This first item of \$705,000 was the contribution made at that time.

Mr. TOWNSEND. In cash?

Mr. DRAKE. Yes, sir; in cash. I would like to impress it upon the committee that that fund was established voluntarily, and the securities remained within the company's control absolutely.

Mr. TOWNSEND. What effect did that have on this item of \$4,000,000? You parted with the cash. Have you canceled the bonds?

Mr. DRAKE. We canceled the bonds that were paid; yes, sir.

The CHAIRMAN. How is that?

Mr. DRAKE. We destroyed the 7 per cent sterling bonds that were retired.

Mr. TOWNSEND. How could you carry that as an item to the credit of the profit and loss account?

Mr. DRAKE. The \$705,088 was a contribution from earnings, and was used to liquidate a capital indebtedness. It was part of the net earnings of the company.

Mr. TOWNSEND. So that this item which you have stated—if not to-day, at some other time—is acceptable for the payment of dividends, is composed of a book account?

Mr. DRAKE. Not necessarily of a book account. It shows in this total to which the stockholders are legally, I might say and morally, entitled, because it was out of earnings.

Mr. TOWNSEND. How would they manage to pay a dividend if you wanted to rely on that alone?

Mr. DRAKE. If that method were to be adopted by the directors, as has been done in the history of the company, to issue a scrip dividend. As a matter of fact, there was nothing of that kind done, however. It has nothing to do with the dividends that have been declared. They were declared out of earnings. It is a record of credit to be proud of, I assure you, gentlemen. You might ask what has become of the property cost of \$7,000,000 in the outset. You might ask what there is to show for the cost. You would be entitled to something to represent that cost. That you have got this large surplus over the \$7,000,000 and debt is due to the conservative manner in which the property has been managed.

Mr. TOWNSEND. I see that; but is this item an item that can be used for the payment of dividends?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Tell me how you could use that payment of \$705,000, which represented cash that you had taken out of the treasury, to redeem the sterling bonds to that amount and cancel them?

Mr. DRAKE. I answered that once, and I can answer it again by saying that you reduced the mortgage indebtedness on your property. The cost of the property had to be charged to capital account. You reduced the lien against the property, as you had placed a mortgage on it and issued bonds for it, and it came, by the action of your directors, to pass to your shareholders the increment which they were entitled to as shareholders in excess of the original cost. It is done continually. It has been done; it is a common practice of corporations.

The CHAIRMAN. That would be true when you paid off the bonds with earnings; but suppose that you paid from the results of other sales of bonds, is it then equally true?

Mr. DRAKE. No, sir; for that would be paying an indebtedness with an indebtedness.

The CHAIRMAN. Certainly. Was not some portion of this sum the result of the sale of bonds?

Mr. DRAKE. No, sir.

The CHAIRMAN. I thought you said two millions of the four millions of the 4½ per cent bonds were sold?

Mr. DRAKE. Excuse me. That refers to a later date. That was subsequent to this payment.

The CHAIRMAN. I understood you to say that this was cash?

Mr. DRAKE. Yes, sir; cash we took out prior to the maturing of the 7 per cent sterling loan. The company had made a practice of investing in outside securities and in its own securities, buying them in the open market for investment of its surplus earnings. For instance, we have now \$22,000 of the 4½ per cent bonds that we bought in the open market. We considered them a good investment and we bought

them. We have at the same time \$126,000 of the subsidy 6 per cent bonds, which were acquired in the same way prior to the liquidation of the 7 per cent sterling bonds, and as the sale of part of those securities was necessary at that time to produce cash, the proceeds were applied to the liquidation of the 7 per cent sterling mortgage bonds. Some slight residue remained and it was carried into liquid cash, where it belonged. No evidence of that accumulation was ever issued to the shareholders. The mortgage indebtedness which before that had been a four million dollar indebtedness was reduced to a two million dollar indebtedness, as a result of such application of earnings. Unquestionably the stockholders were entitled to something to represent their earnings on their invested capital if the usual course adopted by corporations had been followed. Instead they have been carried through the annual balances to this profit and loss account, and if to-day it were part of the policy of the board of directors, this entire amount that shows to the credit of the profit and loss account could properly be issued to the stockholders.

Mr. TOWNSEND. Now, will you explain the next item—the 7 per cent mortgage bonds?

Mr. DRAKE. It follows along in the same way. They were in the voluntary sinking fund and had been acquired with cash out of earnings.

Mr. TOWNSEND. Before they were due?

Mr. DRAKE. Yes, sir. They were held as an investment in the treasury of the company prior to their maturity.

Mr. TOWNSEND. Are they in there now?

Mr. DRAKE. No, sir; they were contributed for redemption of the sterling mortgage in 1897.

Mr. TOWNSEND. How?

Mr. DRAKE. The bonds at their face value were contributed toward the payment of the 7 per cent mortgage.

Mr. TOWNSEND. So that that item of \$693,000 is not now included in this balance of profit and loss?

Mr. DRAKE. Yes, sir; it is, because earnings were taken for their purchase.

Mr. TOWNSEND. Now, take the next item.

Mr. DRAKE. It is a similar case. The accumulations held in the treasury included three hundred and twelve of the company's 6 per cent subsidy bonds bought with earnings.

Mr. TOWNSEND. Is any part of that \$312,000 now in the Treasury?

Mr. DRAKE. \$126,000 of that lot of bonds are in the Treasury to-day.

Mr. TOWNSEND. So that is included in that item?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. How about the additions to the property?

Mr. DRAKE. If you will turn to page No. 7, additions to property, the aggregate outlay for that purpose is stated there. That is, approximately. Of course there are many other items of smaller amount that are not added. It represents the additions that have been made to the permanent construction of the road—\$1,278,000.

Mr. TOWNSEND. It is part of the capital?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Now, that is carried at that full amount in this item, is it—the \$1,278,216.84, which you say is estimated?

Mr. DRAKE. No, sir; I said there were smaller items that might not be included. It represents the principal additions, all that are chargeable to capital account.

Mr. TOWNSEND. Now, the next item is the redemption of Panama Railroad Company $4\frac{1}{2}$ per cent first mortgage bonds, \$981,000.

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. What is the condition of those? Are they in the treasury now?

Mr. DRAKE. They are canceled.

Mr. TOWNSEND. And they are not in the treasury?

Mr. DRAKE. Not in the treasury. But the money has been expended from earnings to redeem them every year, as I stated a moment ago.

Mr. TOWNSEND. So that is the same condition as the \$705,000?

Mr. DRAKE. Yes, sir; it is a contribution from cash.

Mr. TOWNSEND. The next item is \$21,987.50, Panama Railroad Company's first mortgage $4\frac{1}{2}$ per cent bonds. Are they still in the treasury?

Mr. DRAKE. Yes, sir. They were bought in the open market and are in the treasury as a liquid asset.

Mr. TOWNSEND. You wrote out of that a depreciation of equipment?

Mr. DRAKE. That is for equipment and material which is destroyed or becomes so worn out and can not be reconstructed.

Mr. TOWNSEND. That is the only way that you count depreciation, when it can not be used?

Mr. DRAKE. Yes, sir; that is destroyed and thrown on the scrap heap; for we maintain it otherwise as a current operating expense.

Mr. TOWNSEND. Then it can not be used?

Mr. DRAKE. No, sir; unless it be sold as "scrap."

Mr. TOWNSEND. Do you write off every year a certain amount for depreciation of your equipment aside from that that is actually worthless?

Mr. DRAKE. No, sir. On the other hand, we have made large expenditures each year to keep up the equipment.

Mr. TOWNSEND. Do you not add to your capital when you do that?

Mr. DRAKE. No sir; that outlay is charged to operating expenses and maintenance of plant—hence if a lighter were lost, or a car were destroyed, or a train were ruined so that it was absolutely useless, its cost, if not replaced, would be "written off" to profit and loss account, and if replaced would be charged to operation.

Mr. TOWNSEND. And you would deduct from that anything that was lost?

Mr. DRAKE. Anything that was reconstruction we would charge to capital account, and anything that was not permanent improvement, to operating expense.

Mr. TOWNSEND. Would you deduct the article that was actually destroyed, or deduct its cost price?

Mr. DRAKE. We deduct the cost as it stands on the books. I can best illustrate what I want to say by answering your questions. We have 22 lighters in the Bay of Panama which are of the capacity of from 50 to 150 tons. If any one of these becomes useless and is destroyed, failing to find the individual invoice in the records, we

have to approximate by taking an average cost and write off the value so established.

Mr. TOWNSEND. Now, you said a while ago that you keep your equipment up to par all the time?

Mr. DRAKE. Yes, sir; there are no complaints regarding its condition, despite its age.

Mr. TOWNSEND. And you do have something once in a while that you have to destroy entirely?

Mr. DRAKE. Yes, sir; such as lighters and cars.

Mr. TOWNSEND. Lighters and tugs, and so forth?

Mr. DRAKE. Yes, sir. Those are what you will find written off. I have in mind two or three lighters and a tug in the Bay of Colon. Then cars are destroyed, and things of that kind.

Mr. TOWNSEND. As I understand it, looking at page 13 of Exhibit No. 6, the only item aside from cash, possibly, is the second item of \$693,000, and that does not appear in your balance of profit and loss.

Mr. DRAKE. I do not think I said so, sir. I think it does appear.

Mr. TOWNSEND. I understood you to say that that had been disposed of now.

Mr. DRAKE. No, sir. We applied \$693,000 of accumulated earnings to the purchase of the \$693,000 7 per cent sterling bonds, and we had them in the treasury prior to the redemption of the bonds.

Mr. TOWNSEND. What I mean now is that you have redeemed the bonds, so that is no longer an item in that balance sheet?

Mr. DRAKE. The indebtedness was paid at that time with current earnings and the proceeds of the sale of 2,000 first mortgage 4½ per cent gold bonds.

Mr. TOWNSEND. Now, aside from that item and your dividends which you have declared since December 31, 1903, your balance sheet of 1904, or of November, 1904—that is the latest that you have, I believe—for eleven months; you have it only for eleven months?

Mr. DRAKE. That is all. The returns for the year are not all in.

Mr. TOWNSEND. Then what should that balance be to the credit of profit and loss in November, 1904?

Mr. DRAKE. I have not the balance—

Mr. TOWNSEND. Let us assume that you have it, and just answer this question. Your balance of 1904 would be a balance; would it be the balance of December 31, 1903, less the dividends you have paid out, and item No. 2 on page 13 of Exhibit 6, \$693,000?

Mr. DRAKE. It would be the balance shown in the report of 1903, plus the earnings to April 1, 1904, and less the amount of disbursements during same period of 1904.

Mr. TOWNSEND. Now, what disbursements would you take out of that?

Mr. DRAKE. Such disbursements as for dividends and operating expenses, appropriations for depreciation, fixed charges, uncollectible moneys, and items of that kind.

Mr. LOVERING. Is there not \$150,000 for sinking fund taken out?

Mr. DRAKE. That is for the redemption of 4½ per cents.

Mr. TOWNSEND. Does that come out, too?

Mr. DRAKE. The proportion of that would be credited.

Mr. TOWNSEND. Now, I think I asked you some questions the other day, but I notice that our examination at that time was interrupted

frequently by different people testifying, so that I do not know exactly who was testifying.

Mr. DRAKE. I have every desire to have you get all the information.

Mr. TOWNSEND. Yes; that is all right. We will get it all right. Now, you first had negotiations with the Government, who submitted a proposition for the purchase, or the Panama Canal Company did submit a proposition for the purchase of their property in the spring of 1902, as I understand it?

Mr. DRAKE. You will please understand that I represent only the railroad company. I had nothing to do with this negotiation.

Mr. TOWNSEND. Perhaps Mr. Cromwell did.

Mr. DRAKE. And I would like to emphasize the fact that the autonomy of the railroad company has always been maintained. The canal company stood in the same position the United States Government has maintained, as the holder of the majority of the shares. The operation of the railroad company has been always entirely untrammelled by the canal company. We have sought the advice, at times, and sometimes indication of the wishes, of so large a majority of shareholders; but the company has always been administered according to the wisdom of the board of directors, and I again take this opportunity to refer to the record with pride. We have a valuable property, and we think it has been wisely and conservatively administered.

Mr. TOWNSEND. Now, I want to know whether you can not, in the next few days, make out and submit to the committee a full, itemized, complete statement of all of the expenses as shown in your office in New York? You have that all here?

Mr. DRAKE. Yes, sir; but I have it here for eleven months only.

Mr. TOWNSEND. You have not that itemized statement?

Mr. DRAKE. Such as a subdivision going back to the subdivision of the items that you have already spoken of during this session?

Mr. TOWNSEND. Yes, sir.

Mr. DRAKE. I would have to work that out. I would be very glad to do that if you want it.

Mr. TOWNSEND. I would like to have you furnish a full statement of the amount that is paid to the officers and individual officers, including fees.

Mr. DRAKE. I can give you all that excepting in regard to the fees.

Mr. TOWNSEND. We were speaking a while ago of the fact that you had an item given to Mr. Cromwell, that the estimate showed you had given to Mr. Cromwell \$10,000, in addition to his salary, for the legal department.

Mr. DRAKE. No, sir; I said including the item of his retainer. The item for the eleven months was \$6,667.90. I could give you the details of how that excess arose. Of course, in an eleven months' summary eleven-twelfths of \$6,000, or \$5,500, would be charged to that retainer, and the balance would be chargeable to the details which I can give you if you want them.

Mr. TOWNSEND. Do you refer to the accounts?

Mr. DRAKE. Of course our accounts are itemized to the cent. I have here the details of everything but the minute details.

Mr. TOWNSEND. Are you going to leave that memorandum with the committee?

Mr. DRAKE. Yes, sir; but I do not want to surrender it until we get through with it.

Mr. TOWNSEND. What provision have you for the purchase of coal?

Mr. DRAKE. Bids are invited about March 15 of every year from several large coal concerns. We also receive various other bids. We receive bids from representative concerns for supplying our coal requirements for the ensuing twelve months, and the lowest bid is accepted, consistent with the quality required.

Mr. TOWNSEND. Do you buy it from one firm, usually?

Mr. DRAKE. It is a case of the survival of the fittest. We have bought our Isthmus supply for the last five years mainly of the Pocahontas Coal Company.

Mr. TOWNSEND. How much coal do you use?

Mr. DRAKE. We contract for 50,000 tons, and use something approximating that.

Mr. TOWNSEND. Has there been any change in the method of letting your coal contracts since the summer of 1902?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Has there been any change in the price?

Mr. DRAKE. No, sir. We contracted at \$2.65 per ton f. o. b. Norfolk, and it was understood that if there was any reduction in the selling price to other parties the company should have the benefit of that, and the price has been reduced by that process to \$2.50 per ton.

Mr. TOWNSEND. So that you are paying what now?

Mr. DRAKE. Three dollars a ton for bunker coal for the steamers. For the Isthmus supply I said that we had used about 50,000 tons—we contracted for 50,000 tons. We have the right to call for coal in quantities as required, up to that quantity, on ten days' notice, so that we call for it as needed; and we have used now during the current year something like 35,000 tons, and that has been shipped, and the cost is reduced to \$2.50 a ton.

Mr. ESCH. You are a dealer in coal in the Isthmus, are you not?

Mr. DRAKE. On the Isthmus, we are. As that question is raised, I may say that nothing in our concession or charter provides that we may be in business commercially. As we always have a large supply of coal on hand to meet emergencies, gradually our practice of selling coal has developed. We sold it until there was a renewal of complaint by some of the local merchants that we were invading their mercantile rights, and we decided to discontinue the sale of coal. We did so, and within a week after that the Government, the merchants, and connecting lines besought us to resume the selling of coal.

Mr. ESCH. What government?

Mr. DRAKE. The Government of the Department of Panama.

Mr. ESCH. Have you an account of how much coal you sell?

Mr. DRAKE. Yes, sir.

Mr. ESCH. Is that in any of the information that you have furnished to the committee?

Mr. DRAKE. No, sir; but I can furnish it if you want it.

Mr. ESCH. I think that it would be desirable.

Mr. DRAKE. I can say that the profit on the sale of coal by the railroad company amounted last year to about \$35,000, because a large amount of it was used. We have an arrangement with the United States Government by which we furnish its ships with coal

on application. We had an arrangement with the Colombian Government, which was succeeded to by the Panama Government, to sell them coal at the same price as to the United States Government. We sell to any ship there in need of coal, but, of course, at a different price. We sell to local consumers, but at a higher price. We sell to the United States Government at the same price as we do to our own departments.

Mr. ESCH. Then, when you charged yourself with the account of \$111,000 in 1901, it says simply "expense."

Mr. DRAKE. That covers the coal bought in New York for the ships.

Mr. ESCH. And also there is an account for the same year for \$44,000 for fuel for locomotives.

Mr. DRAKE. That is a subdivision of expense at the Isthmus?

Mr. ESCH. Yes.

Mr. DRAKE. Applicable to the railroad. Those are two classes of coal.

Mr. ESCH. Have you any separate account of the fuel that you sell?

Mr. DRAKE. It can be taken out of the account. There is a regular credit on the books from the sale of coal.

Mr. ESCH. But that account is segregated in the annual account, is it not?

Mr. DRAKE. No, sir. It shows at the foot of profit and loss, or rather in the balance sheet it would show as profit on the sales of coal—sale of materials; it is a separate item.

Mr. TOWNSEND. There is one question that ought to have been asked a little earlier. The testimony of Mr. Simmons, I think, was to the effect that the list of officers which you handed us who were elected at the last annual meeting was shown on page 1 of your annual report for 1903.

Mr. DRAKE. The report, Mr. Townsend, shows the status of the previous year.

Mr. TOWNSEND. Yes.

Mr. DRAKE. And any changes from that would show in the first page of the report for the current year.

Mr. TOWNSEND. Now I want to call your attention to this.

Mr. DRAKE. I have a memoranrum here that I am going to leave with the committee.

Mr. TOWNSEND. Let me see that, if you please.

Mr. DRAKE. I will have this prepared in better shape, if you like [handing paper to Mr. Townsend].

Mr. TOWNSEND (after examination of paper). This includes the present officers?

Mr. DRAKE. All those marked with a dash are the present officers.

Mr. TOWNSEND. Those marked with a dash?

Mr. DRAKE. Yes. You asked for the record of the changes during the current year. That shows the officers elected at the beginning of the year, and it shows the changes that have been made since then.

Mr. TOWNSEND. So that the present officers are Mr. Simmons—

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Mr. Drake, Mr. Felton, Mr. Parker, Mr. Cromwell, and Mr. Brown, Admiral J. G. Walker, General Davis, Mr. B. M. Harrod, Mr. W. H. Burr, and Mr. C. E. Grunsky?

Mr. DRAKE. Yes, sir; they with Mr. Parsons make 12, and there is a vacancy because of the resignation of Mr. Hecker.

Mr. TOWNSEND. He resigned November 23, 1904?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. What did he do with his share of stock?

Mr. DRAKE. It stands to his name on the books.

Mr. TOWNSEND. He never paid anything for that stock?

Mr. DRAKE. That I do not know anything about.

Mr. TOWNSEND. Did any of these commissioners—

Mr. DRAKE. Admiral Walker, the chairman of the Canal Commission, bought 100 shares of stock in the market, and out of that transferred one share to each director, replacing shares that they had qualified with before.

Mr. TOWNSEND. Did Admiral Walker buy that stock for himself?

Mr. DRAKE. Those shares stand in his name as chairman of the Commission. They were paid for with a warrant upon the assistant treasurer in New York.

Mr. TOWNSEND. So that he holds them for the United States?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. And all these other gentlemen who are members of the Canal Commission, and are now directors of the company, hold their shares individually?

Mr. DRAKE. They are in their individual names.

Mr. TOWNSEND. Do you know whether or not anybody except Admiral Walker paid anything for his shares?

Mr. DRAKE. I do not.

Mr. ESCH. Are the dividends paid to Admiral Walker and to the other members of the Commission?

Mr. DRAKE. Yes, sir; they would be, regularly. By the by-laws of incorporation they have to be shareholders to be elected directors, so that I know they were qualified before they were elected.

Mr. ESCH. Have they received any dividends?

Mr. DRAKE. Yes, sir.

Mr. ESCH. The checks were made to them individually?

Mr. DRAKE. Yes, sir. The corporation always sends checks to the party in whose name the stock stands.

Mr. ESCH. To whom was the Walker check issued?

Mr. DRAKE. To Admiral J. G. Walker, as chairman of the Commission.

Mr. ESCH. That was in the check, was it?

Mr. DRAKE. Yes, sir. That is the way he stands in the records of the company as a stockholder, as chairman of the Commission; and the Secretary of War, in whose name a majority of the shares are placed, is also designated officially.

Mr. ESCH. Now, Mr. Shaler has resigned down there as superintendent?

Mr. DRAKE. Yes, sir.

Mr. ESCH. And you have not filled the vacancy?

Mr. DRAKE. No, sir. The assistant superintendent is now acting superintendent.

Mr. ESCH. Does Mr. Prescott, who is acting as assistant superintendent, get the same salary that Mr. Shaler got?

Mr. DRAKE. No, sir.

Mr. ESCH. He is now receiving the same salary as when he was assistant superintendent?

Mr. DRAKE. Yes, sir. That position should be filled, one way or the other, for the good of the service, very shortly.

Mr. ESCH. Have you a list of the total expenses, so that you could itemize it, for the Panama end?

Mr. DRAKE. Yes, sir. May I ask with what particularity?

Mr. ESCH. The items for the payment of salaries and fees to men who live there in the employ of the company.

Mr. DRAKE. There are no fees there.

Mr. TOWNSEND. You transfer your expenses for operating the road directly to the New York office?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. And that is reported here?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. These dates which are on the slip which you have given me here show when the former directors resigned and when the new ones were elected?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. How were they elected?

Mr. DRAKE. By action of the board. By formal resignation of the director and election of his successor.

Mr. TOWNSEND. Have you had any meeting of the stockholders for the election of directors since the—

Mr. DRAKE. No, sir; that will come on the 3d of April.

Mr. MANN. How many directors are elected?

Mr. DRAKE. Thirteen are elected annually. The charter of the corporation provides for that.

Mr. MANN. Do you know who is to represent the stock held by the United States at that meeting?

Mr. DRAKE. I have not an idea.

Mr. ESCH. Does the evidence disclose that the cost of the New York office is about \$90,000? It does, does it not?

Mr. DRAKE. Yes, sir, \$91,641.98.

Mr. ESCH. I notice in the annual account that you have a separate account for agency expenses?

Mr. DRAKE. Yes, sir; steamship agency expenses.

Mr. ESCH. For instance, in the year 1901 there was paid as salaries of agents and clerks \$29,000. Is that exclusive of the \$90,000?

Mr. DRAKE. It is shown under the general heading "Steamer expenses?"

Mr. TOWNSEND. Yes, sir.

Mr. DRAKE. Please look at page 19 of the annual report for 1901; you can get a general notion.

Mr. TOWNSEND. Yes, sir.

Mr. DRAKE. For the different departments of the railroad, in the charging up the expenses, the local department is charged with the incidental clerk hire and expenses. For instance, the general office is charged with all of the expenses applicable to the maintenance of the general office. The road department on the Isthmus and the other departments are charged with their proportion. For instance, conducting, transportation, maintenance of equipment, and maintenance of way and construction are charged with their proportions of the clerk hire.

Mr. ESCH. Where are these agencies?

Mr. DRAKE. There are a New York agency and a Colon agency for the steamship line.

Mr. ESCH. Then the New York agency account would be exclusive of the \$90,000?

Mr. DRAKE. Entirely, sir. The total expense of operating the steamship line is shown by this summary of operations for eleven months of 1904 under the heading "Steamer expenses Panama R. R. S. S. Line." For eleven months the expenses, such as for fuel, repairs, stores, docking, injuries to persons, labor on cargo and coal, painting ships' bottoms, stationery and printing, telegrams and cables, and insurance are all charged as operating expenses of the steamship line, and, in addition, all the expenses of the agencies of the steamship line in New York and at Colon are charged under "Agency expenses Panama Railroad Steamship Line," and the total of that subdivision is included with "Steamer expense account in operating expense Panama Railroad Steamship Line." The expenses incidental to the agency are for all advertising for the steamship line, rent and repair of docks and wharves, repairs, etc. When you get a lease from the city you are obliged to make all repairs and take all risks. It is a very strict lease, and the conditions are very onerous. I think that we have about the best dock lease in New York. We have a lease on which we pay only \$18,000, and the company could lease the pier for \$60,000 a year.

Mr. ESCH. Then if we discontinued this railroad office at New York, this agency would have still to be maintained?

Mr. DRAKE. Yes; if the steamship line were continued; and that amounts to \$94,000 for eleven months, because it includes all such items as I have mentioned.

(Thereupon the committee adjourned.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., February 18, 1905.

The committee met at 10 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. EDWARD A. DRAKE (continued).

The CHAIRMAN. Mr. Drake, I would like to ask you a little further with regard to payments for attendance upon the meetings of the executive committee and the board of directors——

Mr. DRAKE. Yes, sir.

The CHAIRMAN (continuing). By members of the Isthmian Canal Commission.

Mr. DRAKE. Yes, sir.

The CHAIRMAN. Do you keep a record of the meetings of the board of directors?

Mr. DRAKE. We do.

The CHAIRMAN. Do you keep a record of the transactions at the meetings of the executive committee?

Mr. DRAKE. We do, sir; a full and complete record, full and complete minutes of everything that is done.

The CHAIRMAN. Have you those with you?

Mr. DRAKE. No, sir. Those records are kept in very heavy record books.

The CHAIRMAN. Do those records show the names of those who attend the meetings?

Mr. DRAKE. They do, for every meeting.

The CHAIRMAN. For every meeting. How many of the meetings of either the executive committee or the board of directors have been attended by members of the Isthmian Canal Commission?

Mr. DRAKE. Nearly all of the regular meetings of the board have been attended by members of the Commission since their election.

The CHAIRMAN. Have members of the Commission, on each occasion, received their fees for attendance?

Mr. DRAKE. They have, sir.

The CHAIRMAN. Who, as you now remember?

Mr. DRAKE. All of them except General Davis and Colonel Hecker, who were absent from the country.

The CHAIRMAN. Fees at the meetings of the board of directors?

Mr. DRAKE. Yes, sir.

The CHAIRMAN. And also, were any of them members of the executive committee?

Mr. DRAKE. Mr. Parsons has been a member of the executive committee.

The CHAIRMAN. Yes, sir. Did he receive his fees for that attendance?

Mr. DRAKE. Yes, sir.

Mr. ESCH. In that connection may I ask him a question?

The CHAIRMAN. Certainly.

Mr. ESCH. Are any of the members of the executive committee or of the board of directors nonresidents of New York?

Mr. DRAKE. Members of the board of directors are, yes, sir. Mr. Felton, president of the Chicago and Alton Railroad, is a non-resident.

Mr. ESCH. Where there is a nonresident director, is he allowed mileage?

Mr. DRAKE. No, sir.

Mr. MANN. Are there any of the members of the Isthmian Canal Commission who are members of your board who were ever paid their traveling expenses?

Mr. DRAKE. No, sir; I may say in further answer to your question, Mr. Esch, that there is no nonresident member of the executive committee.

Mr. MANN. Do any of the members of the Isthmian Canal Commission live in New York?

Mr. DRAKE. Mr. Parsons and Mr. Burr do. Mr. Parsons is a member of the executive committee.

The CHAIRMAN. Are the meetings of the executive committee and of the board of directors held on the same day?

Mr. DRAKE. No, sir; except rarely. On an emergency, they might be, but not otherwise. The days are specified in the by-laws.

The CHAIRMAN. And they never concur?

Mr. DRAKE. In one or two instances they have, but very rarely.

The CHAIRMAN. When was this fee for attendance of the members of this executive committee and of the board of directors determined upon?

Mr. DRAKE. It was by resolution of the executive committee—some years ago.

The CHAIRMAN. How long ago?

Mr. DRAKE. Six or seven years ago.

The CHAIRMAN. Have there been any changes in the salaries or compensations made to servants of the company—officers and servants of the company—within recent years?

Mr. DRAKE. There have been no changes in salaries to corporate officers. There have been some slight modifications of salaries to minor officials and subordinate employees.

The CHAIRMAN. None since January, 1902?

Mr. DRAKE. None since January, 1902; except, as I say, to minor official—subordinate employees.

The CHAIRMAN. The salary of the president was \$10,000 prior to that time?

Mr. DRAKE. Yes, sir; almost from the organization of the company.

The CHAIRMAN. Yes, sir; that is all that I have on this subject. Can you furnish the committee with an itemized statement showing the amounts that have been paid to gentlemen who are members of the Isthmian Canal Commission for their attendance at these board meetings and at meetings of the executive committee?

Mr. DRAKE. Certainly. I promised yesterday to do that, sir. I can do it. There is a perfectly detailed account kept of every penny paid to every member of the executive committee and to every member of the board.

The CHAIRMAN. You will indicate in your statement the dividends paid to them, will you, if any?

Mr. DRAKE. Paid to them as stockholders of the company?

The CHAIRMAN. Yes, sir.

Mr. DRAKE. Very well.

Mr. CROMWELL. You can furnish that Monday, can you not?

Mr. DRAKE. Yes, sir.

The CHAIRMAN. It will be practicable, I suppose, to bring the records of the transactions of the executive committee and of the board here, will it not?

Mr. DRAKE. Yes, sir; perfectly.

The CHAIRMAN. Will you do that on Monday?

Mr. DRAKE. Yes, sir.

The CHAIRMAN. If you please. I think that is all I want to ask in regard to this, Mr. Townsend.

Mr. ESCH. He was explaining in reference to the agencies when we closed yesterday. I think you said, Mr. Drake, that you wished to make an explanation with regard to that.

Mr. DRAKE. Yes, sir. May I ask you for the question that was asked me? As I remember, it was a question as to the apportionment of the steamship agency expenses. I had stated that the general expenses were \$87,000, approximately, for the year, and I had stated that the expense of the steamship agency was an expense apart, and

charged directly to operation of the steamship line. And I was explaining the items that went to make up the total of \$95,000. charged to agency expenses of the steamship line for eleven months of 1904. It is by the addition of these two items that the mistaken estimated aggregate of \$200,000 expenses is made. I showed that the expenses of the steamship line were composed of the rent of buildings and wharves, and repairs of wharves, and the other miscellaneous expenses which I recited; and the point was that the difference is between the general expenses and those of the steamship agency expenses. The whole of the expense of the steamship line and agency is charged to the operation of the line, and the net steamship result developed in that way.

Mr. ESCH. Did you ever maintain an agency at Paris?

Mr. DRAKE. Yes, sir.

Mr. ESCH. Do you maintain it now?

Mr. DRAKE. No, sir. It was discontinued at the time of the resignation of Mr. Whaley. When he returned to Paris he resigned the active management and control of the company here, but retained his position as first vice-president, and was placed in charge of the European department. It was a very important department, in that there are eight steamship lines from Europe that connect with the Panama Railroad at Colon, and a great many questions continually arise that need consideration and adjustment. Conferences are held to fix rates for the carriage of the principal products, which agents of all of the lines attend. Mr. Whaley was always there, and besides attended to the business of the company in Europe, in general.

Mr. ESCH. Do you maintain an agency at San Francisco?

Mr. DRAKE. We have a minor agency at San Francisco. The Panama Railroad Company is a line engaged in commerce with, in effect, the entire world. We have eight steamship lines connecting with us at Colon on the Atlantic side, and each line has its home port. By meetings of the representatives of these lines there are frequent conferences to determine how the joint business shall be carried on under the traffic arrangement between this company, these lines, and other lines which come to Panama. As I said, there are eight lines on the Atlantic and three lines on the Pacific, and the aggregate of the business has developed progressively since the railroad company escaped from all restraint it was under and assumed a dominant position in the commerce passing across the Isthmus. To illustrate, we may say that instead of being only the hinge of a nutcracker, it is the whole nutcracker, and is able to control its own business. The foreign interests of our business were protected by the vice-president in charge of the European department.

Mr. ESCH. If you discontinued your steamship line, would that affect your contracts with European lines?

Mr. DRAKE. Not with European lines.

Mr. ESCH. They would remain?

Mr. DRAKE (continuing). They would remain; but if the line were discontinued it would be reversionary in that it would restore the dominance and the opportunity to dictate to the railroad company which was previously held by these lines. We have escaped from that within the last few years and established a position in which the limits under which they can do business with us are defined, the limits of the reductions in rates are established, and the conditions under

which they must do the business with us are enforceable, through our line, which has been progressively developed as a feeder of the railroad every year, and has been used as a threat—I do not say that offensively—as a means that can be resorted to to compel the strict observance of the conditions by the European lines; because with our line we have always a way of doing the business ourselves. Before we obtained that position they often left us with three or four or five hundred cars blocked with merchandise, which they would fail to move as rapidly as required. We have had our bills of lading so amended that the railroad is in a position to say “Move that cargo at once, or we will move it.” Thus we are in control. So that, as I say, in relation to European lines the policy of discontinuing the Atlantic Steamship Line would be reactionary, reversionary, and destructive. I use those terms in a commercial sense. I have been engaged in these interests of the company for the last fifteen years, and there is not a feature of it that does not show progress.

Mr. ESCH. Now, you state that the Panama Railroad is a regulator of intercontinental rates?

Mr. DRAKE. Yes, sir.

Mr. ESCH. What proof have you of that?

Mr. DRAKE. For fifteen years, from 1878 to 1893, under the contract that we had with the Pacific Mail, by which we received a lump sum for the business we did; for that company this railroad only obligated itself to transport the cargo that was brought to it. The Pacific Mail did not canvass thoroughly for business. But the moment that that contract expired we purchased steamers and established our own line on the Atlantic, and they have been in service ever since, and we began to steadily develop that business, and by having an active, interested, speedy, and direct service to the railroad its tonnage has grown enormously. The whole business to the north of Panama was small. Now the business to San Francisco alone is 15 per cent of the business of the steamship line and 25 per cent of the business of the railroad company, and constitutes 50 per cent of the revenue of the country. It should not be forgotten that the Panama Railroad Company was the original transcontinental line, and its business has grown and its rates have been reduced from \$25 a ton and per passenger in years past until now they are about \$4.50 a ton and per passenger under our new local tariff. The business is increasing, but the equipment has not been increased proportionately. That is, I mean we have been able to handle what is a mere bagatelle to a trunk line here, but is an enormous tonnage for a railroad on the Isthmus 48 miles long. We have handled 400,000 tons a year over that railroad. That total has been transported by steamers to our terminals and taken off, transported across the Isthmus, and placed on steamers on the other side. And the “cargo loss and damage” in that service is only a fraction of 1 per cent of the total earnings, something exceptional in the history of railroads. I speak of that to the credit of the men on the Isthmus. Our headmen there are active white men, Americans, etc., who were engaged here. Every employee of the company who handles the funds of the company is bonded. Our traffic with points north of Panama on the Pacific coast has developed and is carried from Panama on under our contract with the Pacific Mail Steamship Company. We may assume, being practically owned by our chief competitor, the Southern Pacific Railroad

Company, is not in business with us disinterestedly. We forced the Pacific Mail, as it did us for years, until we regained our independence, when amicable relations were established. It is unfortunately true that the Pacific Mail Steamship Company is the only American line operating to the Isthmus on the Pacific side, as our line is the only American line operating on the Atlantic. Thus the withdrawal of either one of them would terminate through traffic under the American flag. We have at different times in the past been allied with the Pacific Mail and severed from them and again allied with them, and are now about to be severed from them. We have established our own line on the Pacific side in order to get freedom from the Pacific Mail, and it resulted in large loss to us and to them. They have a large steamship tonnage on the Pacific side and have their agencies and plants all along the littoral, and we have been compelled again to renew our connection with that company in order to escape loss and obtain what is absolutely requisite, a direct, speedy, and certain connection in order to attract business from the transcontinental lines. Our rates are always at a cut of from 20 to 30 per cent (or more, as may be necessary) to secure the business. Our ships are running regularly and full now; in fact, if the line is to be continued we should have ships of modern construction and more roomy, as our ships are barely adequate for the tonnage we are carrying now, but the business of the line is growing. Our opposition and that of the American-Hawaiian Steamship Line via Magellan to the transcontinental line is the only opposition they have. The Morgan Line from New York belongs to the Southern Pacific Railroad, one of the transcontinental lines, with which it connects at New Orleans.

Our route is thus a controlling factor, because through it a shipper is able to secure a favorable transcontinental rate.

The CHAIRMAN. You can not compete with the transcontinental lines on fruit shipments from California?

Mr. DRAKE. On dried fruit. We do not handle the fresh fruit.

Mr. MANN. What reduction has been made on transcontinental rates within the last ten years?

Mr. DRAKE. The transcontinental rates, I believe, used to average, before 1895, \$18 per ton on the total seaboard traffic. As to present transcontinental business, while I can not speak certainly about them, I believe the average rate has been reduced to \$14. Our traffic manager is here and can give you fuller particulars from the tariffs which he has. But we have had a controlling effect on their rates. I can illustrate that by saying that during the period of 1895 we put on a steamship from Colon to New Orleans, and we compelled the transcontinental by that one act to reduce a long-established \$15-per-ton rate on wine by one-half, accompanied by an agreement not to restore the original rate in any case, in order to meet our competition.

Mr. MANN. You control the rate from San Francisco to New York, by way of the Pacific Mail and your line, do you not?

Mr. DRAKE. Yes, sir; and we get 50 per cent of the through rate.

Mr. MANN. The Pacific Mail gets 50 per cent for carrying from San Francisco to Panama?

Mr. DRAKE. Yes, sir.

Mr. MANN. You get 50 per cent for carrying across the Isthmus and then to New York?

Mr. DRAKE. Yes, sir. The Pacific Mail makes a haul of 3,500 miles

and we make a haul of 48 miles across the Isthmus and of 2,000 miles to New York. They discharge their ship to us, and we handle the freight across the Isthmus and carry by steamship to New York.

Mr. MANN. You say you are the controlling factor?

Mr. DRAKE. No, sir; I say we have a controlling influence on transcontinental rates.

Mr. MANN. That is the same as being a controlling factor. Suppose you should reduce your rate 50 per cent, could that be done?

Mr. DRAKE. It could be done, with serious loss to us.

Mr. MANN. Very well. Your road will be out of existence in a few years, so far as carrying freight is concerned.

Mr. DRAKE. I beg to differ with you on that point.

Mr. MANN. Well, of course you may differ.

Mr. DRAKE. I think I can substantiate my opinion on that.

Mr. MANN. But if the rate is reduced would it have the effect of reducing transcontinental rates?

Mr. DRAKE. I should judge so. It would depend entirely on the quantity that was carried by our route. The tonnage we have now is small as compared with the tonnage carried by the transcontinental roads between the seaboard, but, nevertheless, any reduction in our rate would have an effect.

Mr. MANN. You stated your rate had a controlling effect.

Mr. DRAKE. I mean they have to meet our competition, because our competition is susceptible of development.

Mr. MANN. Then if the United States Government gets absolute control of the Panama Railroad and reduces the tariff from Panama to New York, that will have the effect of reducing the transcontinental rate on all railroad lines?

Mr. DRAKE. Yes; if the volume carried by our route was progressively larger.

Mr. MANN. I am trying to get your judgment.

Mr. DRAKE. I say to you frankly I think it would be ruinous to make the reduction you speak of.

Mr. MANN. You mean to the revenue of the property?

Mr. DRAKE. Yes, sir.

Mr. MANN. Assume that. That is a policy for the Government to determine.

Mr. DRAKE. I want to modify that. I think you may get a wrong impression from what I have said. With such a reduction of the through rate, it would be impossible to get a carrier on the other side to participate in the traffic, and we would have again to establish our own line on the Pacific side. It is a haul of 3,500 miles, and you should give the present management the credit of having reduced rates as far as we could do so and still get remuneration from it. Any further serious reduction would be made under a policy that assumed the whole responsibility for loss of revenue.

Mr. MANN. You think that the Pacific Mail Company would refuse to carry freight from San Francisco to Panama, although they received the same, if the Government received less? My suggestion is that if we could reduce 50 per cent between Panama and New York—

Mr. DRAKE. And still give them what they receive now as an arbitrary or fixed proportion of the through rate as reduced?

Mr. MANN. We may not be able to determine their rates. Would it have any effect on them if they fixed their own rate?

Mr. DRAKE. That would not be a through-billing business. By that method the through rate would be the sum of the local rates. The thesis of through-billing business contemplates the issue of a through bill of lading by the initial carrier.

Mr. MANN. You do not think it would make any difference at all if you reduced our portion of the rate 50 per cent from Panama to New York and left that portion of the rate from San Francisco to Panama as it is now? Would the Panama Railroad refuse to carry the freight?

Mr. DRAKE. I do not think so.

Mr. MANN. I understand that is the contract that is to be changed.

Mr. DRAKE. Independent of the contract, that is the principle of through business, and the business would have to be done on a through-billing basis. If a \$6 rate be established, and our present \$4 share reduced to \$2 per ton, the Pacific Mail would receive 66 $\frac{2}{3}$ per cent and we would receive 33 $\frac{1}{3}$ per cent. We would get \$2 for our haul, and they would continue to receive \$4.

Mr. MANN. If that was the effect, would that have the effect of reducing the transcontinental rate \$2 a ton?

Mr. DRAKE. On our railroad?

Mr. MANN. No, no.

Mr. DRAKE. Yes, sir; I assume it would. Our competition would then be of a character to effect a reduction in transcontinental railroad rates, but our revenue would suffer.

Mr. MANN. You spoke of the European lines. Why do you not maintain a European agency now if it was necessary before? What is the difference in conditions?

Mr. DRAKE. We do not, because we have been able to remodel our business. Mr. Whaley resigned, and we did not consider it necessary to appoint anybody else of equal standing to his position, and in the meantime we had reached an agreement with the European lines, which I have described before, upon a modification of the bill of lading, a remodeling of the classification, and the establishment of a division of rates on the percentage basis.

Mr. MANN. When was that done?

Mr. DRAKE. That end has been secured step by step within the last two years. We had been working for it seven or eight years and finally accomplished it, and the railroad has working arrangements with eight European lines on the Atlantic side and an American and two foreign lines on the Pacific side, and by virtue of the arrangement can in case of need name the line by which the shipments brought to our terminals and not speedily removed must go forward. We advise our connecting lines on each side of any additional connection on the other and assume responsibility for the newcomer until accepted. We give the initial carrier in all cases authority to make the rates down to an agreed minimum, and thereafter lower rates can only be made in case the initial carrier is mutually authorized to make them, so that, while the arrangement is not automatic, it is fitted to meet all requirements. The traffic manager is engaged half of his time in answering inquiries and correspondence on those points. We have established the direction in the New York general office, so that we have better

control than we have ever had before, and there was not the occasion for renewing the European department after Mr. Whaley's resignation for that reason. Most of the cargo that is carried both ways—all of that which goes to Europe being essentially products—is sent collect C. O. D.

Mr. MANN. What proportion of the through rate from Hamburg to San Francisco do you get?

Mr. DRAKE. Twenty-five per cent. We established a uniform proportion on business—on all business except from our own line.

Mr. MANN. As a matter of fact, do you figure that you get 25 per cent of the through rate from San Francisco to New York—

Mr. DRAKE. No, sir. We get 50 per cent.

Mr. MANN. For the trip across the Isthmus, and then 25 per cent for the steamship transportation?

Mr. DRAKE. No, sir; that is not a fact, because we make a different distribution of that rate. Our line commences at New York with the steamship line and extends to Panama. There is a division of the through rate as between our cocarrier and ourselves of 50 per cent to each. There is a relative accounting between the steamship line and the railroad company.

Mr. MANN. If the freight is carried by any other line than your own, would you get 25 per cent for the trip across the Isthmus?

Mr. DRAKE. Yes, sir. I want to make a distinction as to San Francisco business. The railroad company does not receive 25 per cent on that business, which forms the majority of its tonnage.

Mr. MANN. What per cent do you figure belongs to the railroad trip across the Isthmus on the business you get between San Francisco and New York, and what per cent belongs to the steamship service between Colon and New York?

Mr. DRAKE. The earning is divided between our railroad and steamship line on the basis of 55 and 45 per cent of our 50 per cent of the through rate. Forty-five per cent of 50 per cent would be 22½ per cent of the through rate for the railroad.

Mr. MANN. If the rate across the Isthmus, where you now get 25 per cent of the through rate, was reduced, would that have any effect on the total of the through rate between San Francisco and foreign points?

Mr. DRAKE. Yes, sir. The through rate should be reduced proportionately.

Mr. MANN. That is to say, you think the steamship company—

Mr. DRAKE. I think they should, but would not change their rate. There would be a repetition of what has occurred before as the result of like attempts that have been made in the past. For instance, Mr. De Lesseps sought to make the railroad a mere transfer road and make uniform rates or tolls for passengers and cargo—that is, so much per capita and per ton—and the result was illustrative. He began with the Central American and Mexican business.

Mr. MANN. Did he make a reduction of freight rates?

Mr. DRAKE. Yes, sir; over the railroad.

Mr. MANN. What effect did that have on the transcontinental lines?

Mr. DRAKE. They were not in that particular business. I was speaking of foreign business. I was using that incident as an illustration, because I thought it answered your question.

Mr. MANN. There is more or less foreign business to San Francisco?

Mr. DRAKE. To San Francisco, but not from it.

Mr. MANN (continuing). And Hamburg?

Mr. DRAKE. I would like to finish that story, sir, because it is pertinent, and answers your question, in a way. You asked what effect it would have on the through rate, and I said that it should diminish it to the extent that we reduce. The carriers on both sides, however, absorbed our reduction and maintained the same through rate that was in effect before the railroad company made the reduction.

Mr. MANN. That is the illustration you give, but you think it would not have that effect now?

Mr. DRAKE. No, sir.

Mr. MANN. I understood you to say that it would reduce the through rate.

Mr. DRAKE. The through rate should be reduced to the extent we made our reduction, but whether it would or not would depend on the connecting lines.

Mr. MANN. What is your judgment about that, whether it would increase the returns of the road, or whether there would be a reduction on the through rate?

Mr. DRAKE. I think it would ultimately effect a reduction of the through rate, because we should insist upon it, and would bring it about in the end.

Mr. MANN. Is that the effect, more or less, of the transcontinental railroad?

Mr. DRAKE. I do not understand you.

Mr. MANN. Is all that foreign business affected by the transcontinental railroad?

Mr. DRAKE. Yes, sir; a great deal of it goes by United States and Canadian routes.

Mr. MANN. Are not the steamships running from Hamburg to Philadelphia and New York and Baltimore in competition with the steamship lines that go to Colon, carrying through freight for San Francisco?

Mr. DRAKE. Yes, sir.

Mr. MANN. The steamship lines that run to New Orleans are also in competition with the steamers to Colon on through freight to San Francisco?

Mr. DRAKE. Yes, sir.

Mr. MANN. So that a reduction of the railroad rate in Panama is likely to affect the rate all the way through on all of these lines?

Mr. DRAKE. It should. To reduce the railroad rate would not be remunerative to the railroad. It would jeopardize the railroad's revenue.

Mr. MANN. That is very likely, but we are building a canal down there that will cost several hundred million dollars, and I think that nobody ever assumes that it will be remunerative.

Mr. DRAKE. Excuse me, but the railroad has certain obligations that it must meet. We pay \$250,000 to the Republic of Panama, and we have 4½ per cent mortgage bonds which require a redemption fund of \$150,000 a year, and must pay interest on the outstanding bonds. All of that amounts to \$45,000 a month—over \$500,000 a year—now, and will for twenty years. The payments will have to be made by the railroad, and the railroad has to earn the money, and if the rail-

road is to be put in a position so that it can not, it must be because there is an owner who takes the responsibility.

Mr. MANN. Does that company pay the \$250,000?

Mr. DRAKE. Yes, sir. There is a misunderstanding about that. The company's annual indemnity to Colombia was capitalized in 1880 for twenty-eight years and the railroad consequently pays every year by the redemption of these bonds, and in the extinction of that bond in 1908 the railroad will resume paying the \$250,000 in cash, and will continue to pay it until the expiration of our concession, which is in 1969. So that when you contemplate the reduction of the earning power of the property, I ask you to consider what the effect would be. It would be the destruction of what is to-day a well-established, largely remunerative business, and has always been so. The railroad has \$38,000,000 in net earnings since it was organized.

Mr. MANN. Do you think it would be wholly improper for the Government, which proposes to construct a canal, and then make a charge that will be nominal in comparison with the interest and the expense, to consider that it may also reduce a freight rate without regard to profit?

Mr. DRAKE. I do not want to comment on the propriety of the policy, but I think, judging from my standpoint, a commercial one, it would be a mistaken policy, in view of the responsibilities attaching to the operation of the railroad; and as to one thought on this, I am one who believes that the railroad will continue to operate, as it always has, for the reason that all of the lines which come to Colon or Panama are circulatory lines. Their vessels start from their home ports and stop at ports on the way along until when they reach Colon or Panama they have a comparatively small quantity of cargo for transportation over the railroad, and there are eight such foreign lines, at least, in connection with us at Colon and three on the Pacific side in the business. Those lines are going right on with their circulatory business the same as the railroads running in the interior of the country. When the canal is completed it is not going to change that business, which will go on just the same as the service of the Panama Railroad will be going on, and that service is going to be resorted to the same as all railroads are resorted to for the quick transfer of small lots of cargo that would otherwise be combined and constitute a load for a through ship that might be long delayed to complete its load before passing through the canal.

The railroad will supply that need and will, I expect, do business of much larger aggregate than is generally anticipated. I believe that the plans of the canal contemplate providing for the transportation of freight over the railroad at a very much reduced cost of operation, because of increased equipment and enlarged terminals, and that of itself will attract business, as increased facilities always attract business; hence I believe that the railroad will continue to be an important factor in transportation across the Isthmus. You may arrive by steamship one morning at one terminus of the canal, and your steamer will be going through the canal; it will take it twelve hours to get through, and you will not want to stay on the steamer all that time, and you will use the railroad, and with your baggage run across and meet the steamer on the other side when it gets

through. That is going to constitute a business that no one can estimate.

Mr. LOVERING. To return to the meetings of the board of directors and the executive committee, can you tell the committee what the character of the work is that that executive committee is called upon to do; what questions are they called upon to consider, to give their judgment and experience upon?

Mr. DRAKE. Everything relating to the operations of the company. I, as executive officer, carry out all measures adopted by the executive committee. There is no official act of mine of any importance—

Mr. LOVERING. Do they take up the matter of business connected with foreign lines, and such matters as the rate on coffee, and—

Mr. DRAKE. No, sir; that is left to the traffic department.

Mr. LOVERING. That is not brought to their notice?

Mr. DRAKE. No, sir.

Mr. LOVERING. What questions are brought to their notice?

Mr. DRAKE. All questions of policy; all questions of action; the execution of contracts. I might answer your question of a moment ago by saying that no contract is made with these connecting lines, or no agreement that is not submitted to the executive committee, and their decision transmitted to the executive officer. The minutes of the meetings of the executive committee are very full, and show that every such question as the operation of the railroad and increase of its facilities and the making of contracts with connecting lines, and the purchase of material, and in fact every question governing the policy of the railroad company is considered by the executive committee.

Mr. LOVERING. And it is that that makes it important to have a high class of men as directors and members of the executive committee?

Mr. DRAKE. Yes, sir; I think there is no board that can be pointed to that has members of higher standing, individually or collectively. It has been my privilege to sit for years with such gentlemen as General Newton, who was the president of the board before J. Edward Simmons, who holds many other similar positions; Mr. Gallaway, who is president of the Merchants' National Bank; Vernon H. Brown, who is the New York representative of the Cunard Line; Mr. Cromwell; Mr. Hopkins, who was the president of the New York and Susquehanna Railroad Company; Mr. Whaley; Mr. Felton; Gen. W. B. Franklin, who was, as you all know, Chief of the Engineer Corps, and Gen. C. B. Comstock, who succeeded him because of his similar relation. Men of that class have always filled the places of directors in the company. I have forgotten to mention Mr. J. H. Parker, ex-president of the New York Cotton Exchange, and Mr. Einsiedler, managing representative of the Crédit Lyonnais in this country.

Mr. LOVERING. Do you think that the business could have been carried on as well or as profitably without the assistance of a board composed of this class of men?

Mr. DRAKE. No, sir; I think it is essentially necessary—it has been for the past operations, and will be for the future, that there should be a board of that character.

Mr. TOWNSEND. Mr. Simmons has not devoted much of his time to it?

Mr. DRAKE. On the contrary, he is a very regular attendant at meetings, and I think that no one has attended to the business of the company more regularly and attentively. He is always in touch with the company.

Mr. WANGER. We understand the Pacific Mail Steamship Company to be a competitor of the transcontinental railroad lines, or is it controlled or dominated by them?

Mr. DRAKE. A majority of the stock is owned by one of those lines.

Mr. WANGER. Which one is that?

Mr. DRAKE. The Southern Pacific Railroad Company. The Pacific Mail Steamship Company is a company incorporated in New York State that has been in active operation for fifty years and has to-day an establishment all along the Pacific coast between Panama and San Francisco. It has its agencies and fleet of steamers engaged in that business, but I believe it was acquired chiefly because of its steamship service across the Pacific. The Southern Pacific Railroad acquired control of that line; nevertheless a contract was made with us because only an American line is allowed under the coastwise law to carry business between United States coast points and because without coastwise cargo their line would be operated at a loss. With earnings from their port to port business and our coastwise traffic they can operate at a cost that will enable them to accept the agreed proportion they are allowed out of our through rate.

Mr. WANGER. Do you know how the rates charged by the Pacific Mail Company for the transportation of freight from San Francisco to Panama compare with the rates charged by them to South American ports?

Mr. DRAKE. I can not say.

Mr. WANGER. Are not the rates considerably higher to Panama than to points in South America?

Mr. DRAKE. Our rates?

Mr. WANGER. No, sir; the rates of the Pacific Mail Steamship Company?

Mr. DRAKE. I do not know. We have no statistics on that. We have not their tariffs except on the through business.

Mr. WANGER. You have no knowledge of it?

Mr. DRAKE. We are not concerned in their local business.

Mr. WANGER. You have no knowledge of what their local tariffs are?

Mr. DRAKE. I can obtain the tariff, if you wish it.

Mr. WANGER. Do you know whether or not it is cheaper for a merchant in Panama to obtain his goods on the Pacific coast of South America and then ship them from there to Panama than it is to have them shipped direct from San Francisco to Panama?

Mr. DRAKE. That varies on special commodities. There are a great many eccentricities of traffic. We find, for instance, that flour is moving from Guayaquil to San Francisco and from San Francisco to Guayaquil at the same time; and we find the same thing on sugar. When producers are seeking markets sea rates are made competitive, and sea rates vary as a natural result of such competition.

Mr. WANGER. Is there any competition with respect to the port of Panama?

Mr. DRAKE. There are no steamers that run to Panama now except those that connect with our line. The two steamship lines that

connect with the south are the Pacific Steam Navigation Company and the Chilean Company, so-called; and one from the north, the Pacific Mail Steamship Company. There are no other regular lines there.

Mr. WANGER. Do you know whether or not there are any traffic agreements between the Pacific Mail Steamship Company and the lines themselves?

Mr. DRAKE. Yes, sir; there are. We ourselves were the means of bringing about an interchange of traffic at that port, but the conditions of that interchange we do not know. I must speak by hearsay, but I believe that the returns to each party out of the through rate are established on a mileage basis.

Mr. LOVERING. In your opinion, would it be advisable for the United States, after it takes possession of everything—the railroad and everything else, and the management of the railroad, and so forth—do you think it would be good business to retain an official connection in the city of New York?

Mr. DRAKE. I think it is absolutely necessary. I make that statement without any bias, because I am operating an office for the property. I think it is absolutely necessary, because the business, as I explained earlier, is managed entirely from here now. All of the returns of the company's business are received here, and all of the rates are established from here, and all of the machinery of the company is here, and I think it would be a great mistake to revert to the old conditions which obtained when Colon was the terminal of the railroad company, because New York is a commercial center. The business of the line to-day requires a large clerical force of a character that could not be retained permanently on the Isthmus as it is retained here, because of the necessity for giving long periodical vacations, whereas here we have men who have grown up in the business who are constantly engaged in checking the accounts and are fully informed of conditions relating to traffic with our cocarriers.

Mr. LOVERING. Does not the New York management govern and indicate what freight will be available at Colon—at Panama? Is it not all known in New York?

Mr. DRAKE. The whole business is done in New York.

Mr. LOVERING. And a ship arriving there knows before it arrives even, or knows when it does arrive, that it will have a cargo?

Mr. DRAKE. Yes, sir; we are advised of the arrival and departure of the ships and the amount of cargo they have or may expect. That does not apply to the European markets.

Mr. LOVERING. You have a great deal of demurrage?

Mr. DRAKE. The ships move regularly. I may say that there were, within one week in December, 20 large steamers handled in the port of Colon, where we have only three wharves at present, without any demurrage or any interruption of regularity. There was some little interruption, but we were able, by our organization down there, to handle it; but without the officers in New York it would be more difficult to manage it, because friction and delays can be more speedily repaired between principals.

Mr. LOVERING. It would be more difficult without the officers in New York?

Mr. DRAKE. The whole business is directed from New York. Under our concession we are compelled to retain a representative down there,

but the operations are all directed from here. We have a general manager who is in close touch with the railroad all the time, and the superintendent reports to us by every mail everything that needs consideration here, or that he needs authority for there. Anything that is important and requires the action of the executive committee is submitted to it. Every outgoing mail is bulky with letters containing instructions to him for handling all kinds of business that may arise. It would be destructive of traffic and revenue to so arrange that the management of the business of the railroad company be transferred to the Isthmus.

Mr. ESCH. You state that reducing the railroad rate would have the effect of diminishing the through rate, and that would be detrimental to the through road. Would not the reduction of the through rate stimulate rather than discourage business?

Mr. DRAKE. Yes, sir; it should, undoubtedly.

Mr. ESCH. Would not, then, the railroad receive an increased revenue by reason of the increased business?

Mr. DRAKE. That would depend upon what was done with that reduction. If the present carriers on both sides remained, and other companies operating on both sides arranged for an interchange of traffic on the basis of the railroad's reduced rate, it might be that would throw open the business to severe sea competition, which might result in the survival of the fittest, and so produce the conditions that gave us the Pacific Mail connection in 1878.

Mr. LOVERING. Do you ship much freight that originates at interior points of this country on the Atlantic?

Mr. DRAKE. Yes, sir; our rates are made so that in exceptional cases they extend back even to Chicago.

Mr. LOVERING. Has that freight originating in Chicago been shipped to New York, and by your steamers to Colon?

Mr. DRAKE. Yes, sir; it has. It oftener comes from around Pittsburg. The other day when a large shipment of sewer pipe went from Marion, Ohio, to New Orleans, going down that way, we felt that our territory had been invaded.

Mr. LOVERING. Do you make a special rate in such cases?

Mr. DRAKE. No, sir; we make a through rate which absorbs the cost of bringing it to New York.

Mr. LOVERING. Does that obtain also on the Pacific slope?

Mr. DRAKE. No, sir; except in theory.

Mr. LOVERING. And notwithstanding that fact you can meet the competition of the transcontinental lines?

Mr. DRAKE. Yes, sir.

Mr. MANN. That is because of the fact that the transcontinental rate is the same from New York as it is from Omaha to San Francisco.

The CHAIRMAN. The postage-stamp rate?

Mr. MANN. No, sir; the freight rate. The freight rate is the same from all points east as it is from Omaha.

The CHAIRMAN. Just excuse me one moment. I want to ask one more question. You named a large number of persons who had been connected with the directory of the Panama Railroad. Were those gentlemen large stockholders?

Mr. DRAKE. No, sir; they were qualified stockholders.

The CHAIRMAN. Qualified by taking a share?

Mr. DRAKE. By buying a share. They were owners of their stock.

The CHAIRMAN. Was it presented to them?

Mr. DRAKE. No, sir.

The CHAIRMAN. Or did they buy it in the market?

Mr. DRAKE. They bought it, sir.

STATEMENT OF WILLIAM NELSON CROMWELL,

General counsel and director of Panama Railroad Company.

Mr. TOWNSEND. You have been connected with the Panama Railroad how long?

Mr. CROMWELL. About fifteen years, sir.

Mr. TOWNSEND. And during all that time you have been attorney for the road?

Mr. CROMWELL. Yes, sir; my firm, Sullivan & Cromwell, are the general counsel.

Mr. TOWNSEND. And also a director, have you?

Mr. CROMWELL. Nearly all this period I have been a director.

Mr. TOWNSEND. You were also active in negotiating the transfer of the stock of the Panama Railroad Company to the United States?

Mr. CROMWELL. Yes, sir; I was general counsel for the New Panama Canal Company, and as such completed the transfer to the United States of the property of the canal company, including 68,886 shares of the stock of this railroad company.

Mr. TOWNSEND. And you are now engaged in getting hold of the outstanding shares for the United States?

Mr. CROMWELL. Yes, sir; in accordance with the information which I gave you at our last hearing the President and the Secretary of War charged me with the task of acquiring the balance of the stock at par, and I have made a proposal to stockholders to that effect.

Mr. TOWNSEND. In the list of stockholders which you furnished us in New York the other day, and which I believe you stated is a correct statement of the holders of the stock so far as your books are concerned?

Mr. CROMWELL. Yes, sir; absolutely; and I think it is substantially correct, in fact, according to the experiences I have had in dealing with the parties.

Mr. TOWNSEND (continuing). You have a good many of these shares that you have purchased since, that have not been transferred to the United States?

Mr. CROMWELL. Yes, sir; certain of them I have already acquired for the Government.

Mr. TOWNSEND. I noticed by this list that you personally hold 30 shares?

Mr. CROMWELL. Yes, sir.

Mr. TOWNSEND. Have they been transferred to the Government?

Mr. CROMWELL. Yes, sir; I was the first to turn in my few shares as soon as the Government was ready to take them. I transferred 29 of them to the Government, retaining one share to qualify me as a director. I had acquired 30 shares principally as a matter of convenience in the administration of the company, to qualify directors. As general counsel I had decided that it was necessary that each director should actually own at least one share.

Mr. TOWNSEND. When did you buy these 30 shares?

Mr. CROMWELL. Perhaps four or five years ago. The books will show. They are of trifling amount, you see, and were of no consequence to use otherwise.

Mr. TOWNSEND. Do I understand you that you purchased these shares for the purpose of transferring them to the directors?

Mr. CROMWELL. Yes, sir; as a convenient means of qualification, as required from time to time, but the directors always paid for their single qualification share. It is unprofitable, but a mere trifle.

Mr. TOWNSEND. Unprofitable?

Mr. CROMWELL. Certainly.

Mr. TOWNSEND. Is not the stock profitable?

Mr. CROMWELL. It has not proven so to the owners, in the payment of dividends or otherwise.

Mr. TOWNSEND. But as the owner of the stock you are the owner of the surplus?

Mr. CROMWELL. The surplus has not been distributed. It is, in fact, valuable, but it has not proven a good investment.

Mr. TOWNSEND. I do not believe I understand you.

Mr. CROMWELL. It has an inherent value.

Mr. TOWNSEND. You mean the stock that you have thus transferred has not been profitable to you? You mean that it has not been profitable to you?

Mr. CROMWELL. Certainly. The few shares I speak of have given no profit to me, nor were they acquired for that purpose. I attach no importance to such a small affair, from a business standpoint.

Mr. TOWNSEND. You do not maintain that the stock of the company is not valuable?

Mr. CROMWELL. On the contrary, I think it is valuable.

Mr. TOWNSEND. Now, you had something to do before now about the contract that was entered into with the Pacific Mail Company?

Mr. CROMWELL. Yes, sir.

Mr. TOWNSEND. When was it that that company—the Pacific Mail Company—was transferred from the Southern Pacific to the Northern Pacific?

Mr. CROMWELL. Permit me to correct your question. It was not the Northern Pacific that owned the majority of Pacific Mail stock; it was the Southern Pacific.

Mr. TOWNSEND. Is it the reverse of that?

Mr. CROMWELL. The transfer was from the C. P. Huntington estate to the Southern Pacific. I simply wanted your question to be so that I could correctly answer it. The Northern Pacific is not the railroad in mind.

Mr. TOWNSEND. Did we not have testimony that it was concerned?

The CHAIRMAN. A gentleman said yesterday that it was transferred to the Northern Pacific and then back to the Southern Pacific.

Mr. CROMWELL. That would be inaccurate, sir.

Mr. TOWNSEND. Tell us what the history of that is. We have it all down here in this testimony, and I am sure that the Northern Pacific is mentioned.

Mr. CROMWELL. It is a matter of current railroad history, and I do not suppose that my information is any better than that of other gentlemen. But we know, as a matter of current railroad knowledge, that the majority of the capital stock of the Pacific Mail Steamship Com-

pany was acquired some years ago by Mr. C. P. Huntington. After his death it was acquired by the Southern Pacific. Subsequently, by the absorption of the Southern Pacific into the Union Pacific system, it came into the control of the latter system, by which it is now held. We have no relations with any of these railroads that I speak of. I mention it simply as a matter of information.

Mr. TOWNSEND. I understand that the Panama Railroad Company has no connection, directly or indirectly, with any of these railroads?

Mr. CROMWELL. None whatever. We do not know them in the transaction of any of our business.

Mr. TOWNSEND. Can you tell me how many dividends the Panama Railroad Company has declared since the Commissioners, the members of the Isthmian Canal Commission, became directors in the railroad company?

Mr. CROMWELL. One dividend, sir.

Mr. TOWNSEND. When was that?

Mr. CROMWELL. In January last, the dividend which has just been paid, February 1, 1905.

Mr. TOWNSEND. And that was 5 per cent?

Mr. CROMWELL. Five per cent; yes, sir.

Mr. ESCH. In that connection, what was the share that the Government received on that dividend?

Mr. CROMWELL. In dollars and cents?

Mr. ESCH. Yes; if you can give it approximately.

Mr. CROMWELL. Yes, sir; I can. [Making calculation.]

Mr. MANN. That would leave out 1,034 shares.

Mr. CROMWELL. Yes, sir. The Government now owns 68,988 shares, of record, I think. I sold to the Government of the United States 68,887 shares. Since that time, by the direction of the Secretary of War, the Isthmian Canal Commission purchased 101 shares at par, making the present holdings of the United States Government 68,988 shares.

Mr. RICHARDSON. What is the number of the outstanding shares?

Mr. CROMWELL. Leaving outstanding in the hands of the public 1,012 shares. The United States has received in cash \$344,940, the dividend paid on the 1st of February of this year.

Mr. TOWNSEND. To whom was that paid?

Mr. CROMWELL. All of this sum was paid by check to the Secretary of War, with the exception of the dividends on 94 shares which stood in the name of Admiral Walker, chairman of the Isthmian Canal Commission, which was paid to him as the chairman of the Commission, and the dividend on the remaining 7 shares, owned by the Government, and paid directly to the seven members of the Commission, in whose respective names the shares stood.

Mr. TOWNSEND. You included in these shares the shares held in New York by the members of the Commission?

Mr. CROMWELL. Yes, sir; because they were qualified as directors out of the 101 shares which the United States purchased. Of the 101 shares purchased, 94 remained in the name of Admiral Walker, the chairman of the Commission, and the other 7 were divided among the members of the Commission.

Mr. RICHARDSON. What is the estimate of the value of the shares held by the public as compared with those held by the Government?

Mr. CROMWELL. There is no market value except \$100 a share.

Mr. TOWNSEND. Admiral Walker holds 95 shares?

Mr. CROMWELL. At first I qualified him and each member of the Commission out of my 30 shares. Afterwards this was returned to me. Of the 101 shares purchased by the Government there were 95 placed in the name of the chairman. One share was transferred to Admiral Walker to qualify him as director, leaving in his hands 94 shares as chairman of the Commission. The one share which stands in his name individually is also owned by the Government, as are those which stand in the names of the other members of the Commission.

Mr. TOWNSEND. Then he holds 95 shares with that one?

Mr. CROMWELL. Ninety-four in his capacity as chairman of the Commission, and one in his individual name, but all belonging to the Government.

Mr. TOWNSEND. Do you not think that the stock that the Government does not now own is likely to increase in value very rapidly by reason of this fact?

Mr. CROMWELL. I can not say. Have I made that clear, Mr. Townsend?

Mr. TOWNSEND. Yes, sir; I think so. Now, do you remember what was stated at the time Mr. Drake testified about (in New York) in regard to the payment of per diem fees to the members of the board of directors and to persons as members of the executive committee?

Mr. CROMWELL. I do not know anything about that.

Mr. TOWNSEND. You do not know that?

Mr. CROMWELL. No, sir.

Mr. TOWNSEND. You were not concerned in the matter?

Mr. CROMWELL. No, sir; it was none of my concern.

Mr. TOWNSEND. Now, you were employed as attorney for the Panama Canal Company?

Mr. CROMWELL. Yes, sir.

Mr. TOWNSEND. And also as attorney for the Panama Railroad?

Mr. CROMWELL. Yes, sir.

Mr. TOWNSEND. And you have also occupied the position as agent for the Republic of Panama in the investment of the \$10,000,000 obtained by them?

Mr. CROMWELL. I have. I was counsel to the special fiscal commissioners and I am now, in succession, the special fiscal commissioner of the Republic of Panama. Under my advice the Republic invested its moneys in the United States.

Mr. TOWNSEND. How much of that did they invest?

Mr. CROMWELL. \$6,000,000; and they have also nearly \$3,000,000 more on deposit at interest in New York.

Mr. TOWNSEND. And how much of that \$6,000,000 is invested in bonds of the Panama Railroad Company?

Mr. CROMWELL. About \$1,000,000 of the 4½ first-mortgage bonds were purchased in the open market at a premium. I regarded them as bonds of the highest character, and I recommended them to the Commission as being bonds worthy of their fullest confidence. I regard this corporation as one of the best in the United States, and they manifested their confidence in this Government by making the investment.

Mr. TOWNSEND. What was the actual price paid for those bonds?

Mr. CROMWELL. Ordinarily I would ask to be excused from answering that question, as it involves my relations to the Republic; but as I have, with the approval of the Republic, informed the United States Government of the transaction, I feel at liberty to state to you that the Government of Panama paid 105 per cent. They were purchased in the open market the same as Government bonds or anything else are purchased. The purchase was no concern of the Panama Railroad Company as a corporation, of course. The bonds were not purchased from the company, but through bankers in the open market, as an investment.

The balance of the money of the Republic is invested in first mortgages upon improved real estate in New York, at the rate of $4\frac{1}{2}$ to $4\frac{3}{4}$ per cent; investments of the highest character, and in respect of all which we feel some pride.

Mr. LOVERING. I would like to ask you if you consider it a good business proposition for the Government, or anybody connected with this railroad and this property, to continue operating it as a complete through transportation line?

Mr. TOWNSEND. From New York to San Francisco?

Mr. LOVERING. From New York to San Francisco, complete. I am asking for your judgment on it as a business question.

Mr. CROMWELL. I understand that you mean as to earnings, being controlled solely by business considerations and not by any question of public policy. With that understanding, I answer, yes. As I have said at a previous hearing the Panama Railroad has been in operation for over fifty years. It has not ceased operations one hour during that long period. It has never defaulted in payment during that half century. It has never ceased throughout that whole period to make money, save in two or three years when the board experimented with some new business policy, as Mr. Drake and others have testified. I refer especially to the periods when they terminated the contracts with the Pacific Mail, on one occasion inaugurating the "open-door" policy and on another occasion making alliance with the San Francisco merchants. On those occasions we suffered loss. But it is a very interesting fact to note the earnings made during this half century. It may be of interest to you, for I assume that you desire to know all about your property. You want to make up your minds as to whether you had better disintegrate and abandon this splendid business which it has taken half a century to build up, or whether you want to operate it and make earnings which will diminish to that extent the cost of the canal. It is for us, of the Panama Railroad Company, to give you all the light we can. None of us have any pecuniary interest in what you do about it. The New York gentlemen who are directors are serving as a matter of favor, and they are perfectly indifferent, from a pecuniary point of view, as to what the United States does with this property after it becomes sole owner. As a matter of fact, it has been a great boon to the stockholders to get them to serve and to secure their great experience and active interest. They are gentlemen of distinction in their several occupations. We had two bank presidents, two railroad presidents, two bankers, one cotton merchant of great experience, two retired generals of the Civil Engineer Corps of the United States, one civil engineer and railroad manager of international reputation, besides Mr. Drake. I assume that you want to know some-

thing about your property. Therefore I present you a statement, prepared by the treasurer, showing that from 1852 to November 30, 1904, the Panama Railroad Company earned \$38,859,254.

EXHIBIT 8.

Net earnings, 1852 to November 30, 1904.

1852	\$171,759.33
1853	202,334.65
1854	181,212.29
1855	591,278.55
1856	847,629.72
1857	591,481.49
1858	735,653.72
1859	579,200.65
1860	765,628.23
1861	841,287.04
1862	1,309,527.70
1863	1,159,898.30
1864	1,815,013.65
1865	1,258,744.59
1866	3,054,441.70
1867	1,838,301.84
1868	2,465,697.52
1869	972,521.78
1870	343,315.49
1871	244,680.20
1872	700,584.48
1873	579,774.39
1874	562,001.91
1875	730,714.21
1876	695,147.04
1877	1,071,683.37
1878	1,079,626.06
1879	1,120,957.46
1880	1,102,258.39
1881	1,306,406.03
1882	1,082,535.29
1883	1,151,791.67
1884	1,175,823.67
1885	71,609.56
1886	118,581.20
1887	619,831.37
1888	1,150,544.45
1889	384,149.69
1890	348,873.82
1891	323,800.83
1892	182,816.90
1893	133,609.61
1894	80,776.02
1895	62,943.85
1896	545,684.53
1897	409,873.37
1898	266,746.73
1899	295,231.77
1900	446,764.68
1901	259,590.12
1902	295,384.40
1903	401,068.30
1904 (11 months)	561,315.95
Total	39,073,729.93
Less losses	214,475.63
Net earnings, 1852-1904	38,859,254.30

• Deficit.

Throughout that entire period there were, you see, but two years in which a deficit occurred. Those were the years 1893 and 1894, when the company was trying one of these experiments. This \$38,000,000 is the colossal return of this property, managed as a combined railroad and steamship business.

The CHAIRMAN (Mr. Hepburn). How much has it diminished its debt during that time?

Mr. CROMWELL. During that period, sir?

The CHAIRMAN. Compare the debt of 1852 with the debt of to-day.

Mr. CROMWELL. Mr. Chairman, there was no mortgage on the property in 1852. It was built with the proceeds of the stock, etc. The company has never issued but two mortgages in all its history.

The CHAIRMAN. When were they issued?

Mr. CROMWELL. The 7 per cent sterling mortgage was issued in 1867, and it matured in 1897. It was for \$4,000,000. In 1897 it was replaced by the present 4½ per cent first mortgage issue. By applying earnings to that purpose we have gradually reduced that issue so that to-day there are outstanding but \$3,159,000 bonds, of which the company itself owns in its own treasury, as treasury assets, \$647,000, leaving only \$2,372,000 in the hands of the public. Thus the original mortgage debt of \$4,000,000 has been reduced to a net outstanding indebtedness of \$2,372,000.

The CHAIRMAN. When you say "this mortgage," you mean the last one?

Mr. CROMWELL. Yes, sir; the present 4½ first mortgage.

The CHAIRMAN. The older one was canceled?

Mr. CROMWELL. Yes, sir; it was canceled in 1897 and replaced by the present one I have referred to. I made the sale of \$2,000,000 of these bonds myself to Messrs. Vermilye & Co., bankers, of New York, as a member of the executive committee. I sold them at a good price, and from the proceeds of the sale of these 4½ per cent bonds, plus \$705,000 cash out of the treasury, we paid off the balance due on the sterling mortgage.

The Panama Railroad Company is never a borrower. Such a thing as issuing a note or bills payable, or anything of that character, is unknown to us. We are always a depositor of money at interest. For years and years, surely as long as I have been connected with the company, it has been a depositor at interest of moneys in the trust companies of New York, and it is so at this moment. We seldom have a balance of less than \$500,000 to \$1,000,000 in cash. Our balance now is over \$500,000 at this moment, after paying \$350,000 in dividends on the first of this month. We discount for cash our accounts current for supplies as fast as we can, availing ourselves of every means of discount and economy in that way.

Mr. WANGER. How much of those net earnings were earned before the railroad company went into the steamship business on the Atlantic side?

Mr. CROMWELL. From 1852 to 1878 the railroad company had several different steamship connections on the Atlantic. From 1878 to 1893 it had a traffic contract with the Pacific Mail, which operated a regular line between New York and Colon.

In 1893 the railroad company established its own steamship line on the Atlantic, displacing the Pacific Mail on the Atlantic, and has

ever since maintained the supremacy. This is the line we now operate.

From Exhibit 8 it will be seen that the earnings from 1852 to 1878 were \$24,309,519.84; from 1878 to 1893, \$11,219,606.39, and from 1893 to 1904, \$3,330,128.07. The Panama Railroad is a New York corporation, and its charter provides that it not only may conduct a railroad business, but also a steamship business, and it is pursuant to that power that those joint operations are carried on.

The Panama Steamship Line is not a separate corporation, but is merely one branch of the corporate business, which is divided into two departments, the railroad and the steamship.

Mr. ADAMSON. It is merely a property of the railroad company?

Mr. CROMWELL. That is right. One branch is reciprocal to the other; and for that reason I think it is inadvisable to separate the Atlantic Steamship Line from the railroad. The railroad is fed by the Atlantic Steamship Line.

Mr. MANN. Just one question there, not connected with this at all.

Mr. CROMWELL. Yes, sir.

Mr. MANN. As counsel for the railroad company, have you had any occasion to form any opinion, or have you otherwise come to any judgment, as to our right—the right of the Government—to condemn the shares of the company held by private owners?

Mr. CROMWELL. Yes, sir. I have studied that question.

Mr. MANN. What is your opinion?

Mr. CROMWELL. My opinion is that the bill which has been recommended by this committee and which has passed the House (known as the Mann bill) is constitutional, and that the condemnation proceedings therein provided for are legally enforceable.

Mr. RICHARDSON. Did you ever know of an instance in the history of the country where it was done?

Mr. CROMWELL. There is no condemnation statute of this kind in any State of the Union. It is unique, but there are decisions of the courts sustaining the principle of the bill.

Mr. RICHARDSON. Under the right of eminent domain?

Mr. CROMWELL. No, sir. I am sure that I could not tell you gentlemen, who are so able and experienced and have traveled over this ground so thoroughly, anything additional to the result of your studies. Mr. Townsend asked me a question upon that subject at the last session, and I gave him an opinion, off-hand, and this will be found in the minutes.

Mr. ADAMSON. I have heard of such things. There is a case in Massachusetts and one in Connecticut, I believe, but I have not read them. Have you seen them?

Mr. CROMWELL. Yes, sir. They sustain this principle upon which the pending bill is framed.

Mr. ADAMSON. Did they condemn the minority stock, or the entire property?

Mr. CROMWELL. The minority stock.

Mr. SHACKLEFORD. I will say that this testimony, which has been given at these hearings and is typewritten, is here and can be read by everyone who wants it; and there is in it a very thorough review of this by Mr. Cromwell, and I may say a very satisfactory review.

Mr. RICHARDSON. You have never known an instance in the history

of the country where the right of eminent domain was exercised by the condemnation of personal property?

Mr. CROMWELL. No statute exists; but the right of appropriation of real or personal property for public use is an attribute of sovereignty and can be exercised through a statute.

Mr. RICHARDSON. Yes, sir.

Mr. CROMWELL. I have no doubt whatever of the constitutional power of Congress to enact such a law. The right of eminent domain undoubtedly resides in the United States, and the power which may define the exercise of it is the Congress of the United States. There must exist a public need and the subject-matter must be, of course, within the jurisdiction of the United States.

As an illustration, we could not condemn the railroad itself of the Panama Railroad Company under the right of eminent domain, because that is upon the Isthmus in a foreign territory, and Congress has not jurisdiction of the land—the road, the corpus. But the stock of the Panama Railroad Company is in contemplation of law in the State of New York. As you know so well, the capital stock of a corporation is in contemplation of law at the charter home of the corporation. The certificates for the shares of stock which the ordinary layman considers to be the stock itself, we all know is not the stock, the certificate being simply the evidence of ownership in the stock. The stock itself lies in the company, and in this case it is a New York corporation—its legal home is in the State of New York. The proceeding is somewhat in the nature of a proceeding in rem, as in the case of a vessel. The vessel is brought into court, theoretically, and in contemplation of law is before the tribunal; the parties in interest all over the world are notified in manner prescribed by statute and are bound by the decree of the court; there results a decree of sale of this personal property as against all owners, lienors, and others, and title absolute passes to the purchaser. The rights of the former owners, etc., are thus transferred to the proceeds of sale. This is an illustration. As I said at the previous hearing, the principle which sustains the bill you have passed lies in the public use—the public necessity. I have no doubt in this case that the Government will be able to show that the public use, national interest or necessity, requires the ownership of the stock; for it is not merely the ownership of the majority, or of nearly all of the stock, that will enable the United States to devote the Panama Railroad to all the uses which the public interests require in the construction of the canal. You require all of the stock to fully utilize the railroad in the construction of the canal.

Mr. ADAMSON. I desire to ask you a question which Mr. Shackelford says is not a repetition of the record, in regard to these decisions in the States.

Mr. CROMWELL. Massachusetts and Connecticut?

Mr. ADAMSON. Yes. Does it appear that the State owned the majority of the stock?

Mr. CROMWELL. No, sir; private ownership. In principle, however, I do not think it makes any difference; and in the present case there is the additional reason of necessity for public use.

Mr. ADAMSON. I do not think there is any doubt of our right, and I do not think there is any doubt of our power. The question is whether it is necessary to do that.

Mr. CROMWELL. The necessity and justification lies in this. The Panama Railroad is a necessary instrument for the completion of the canal. It is the only railroad empowered to operate upon the Isthmus. It has an exclusive concession to that effect. That concession has sixty years to run, and it underlies even the treaty between the United States and Panama. It follows that this railroad is a necessity in the construction of the canal, which is a public work of superlative utility.

Now, as long as any of the stock is outstanding the road must be operated as a commercial road, for profit. The public need dominates all other views on this subject, and, in my opinion, justifies a court in expropriating the outstanding shares to the public use, so that the United States may operate the railroad without profit, if it chooses, and untrammelled by the requirement of using it for commercial purposes, if need be; that it may use the railroad as an instrument of construction, just as it may use any other instrumentality.

Mr. ESCH. Conceding the right of the Government to maintain the steamship line on the Atlantic, supposing the Government condemned all the outstanding stock, and thus became the owner of the railroad and the steamship line, could not the Government continue this exclusive contract with the Pacific Mail Steamship Company?

Mr. CROMWELL. Under the law, you mean?

Mr. ESCH. Yes, sir.

Mr. CROMWELL. Do you mean for the United States to continue it as the direct owner of the railroad and steamship property, or do you mean through the corporation itself?

Mr. ESCH. As the owner of the property. We would become the owners of the property.

Mr. CROMWELL. If the United States acquires all the outstanding stock, of course the corporation would exist just the same. The only change taking place would be the change of ownership of stock, and if the United States chose to continue in that relation, then the business would still go on through the corporation in any manner that the United States as the single stockholder might dictate.

Mr. MANN. Suppose that we should absorb the Panama Railroad corporation, then what would be the effect of the exclusive contract on the Pacific Mail Steamship Line? Suppose the Government acquired the ownership of all the stock?

Mr. CROMWELL. Yes, sir.

Mr. MANN. And then proceeded to absorb the Panama Railroad Company and became the owner, simply as the Government? Would the Government then have the right to maintain an exclusive contract with the Pacific Mail Company?

Mr. CROMWELL. You mean as a matter of law?

Mr. MANN. Yes, sir.

Mr. CROMWELL. You mean as a matter of public policy and law?

Mr. MANN. Yes; or have you given consideration to that subject?

Mr. CROMWELL. I have considered it, but I would prefer not to express it just now, if you will kindly excuse me.

Mr. ADAMSON. Suppose we take the instance mentioned just now, and in lieu of condemnation proceedings let the court administer and we buy the property. Would not we then become the assignee of every right and obligation that this railroad company has?

Mr. CROMWELL. That would require proceedings for judicial dissolution under the law of New York, and it would be necessary for the United States, in order to become the purchaser of the property, to make a bid large enough to pay off all the debts of every character and such sum as would be competitive with strangers.

Mr. ADAMSON. My object was to suggest to your mind the legal aspect of the question; that is, if we purchased the property we would take over the rights and the contracts and everything else.

Mr. CROMWELL. Certainly; the United States then would be the direct owner of the property, just as it is now of the canal property.

Mr. TOWNSEND. What arrangement do you make, or has the railroad made, with the United States Government down there now in the operation of the canal?

Mr. CROMWELL. In the operation?

Mr. TOWNSEND. Yes, sir; for its assistance to the canal work there?

Mr. CROMWELL. The railroad company transports material, supplies, etc., for the Government at fixed rates and serves all the requirements of the Government at a specified tariff; but, as you know, the Government is not yet actively carrying on actual construction work on the Isthmus in a manner to require any important use of the railroad. The construction work of the United States, as you know so well, is at present confined mostly to the excavation at the Culebra cut, the sanitary work, and the terminal ports. Up to this time we have been able to satisfy all demands without undue tax upon our railroad facilities.

Mr. TOWNSEND. Does the Panama Railroad Company own those sidings where they take off the dirt?

Mr. CROMWELL. Yes, sir; all the sidings are owned by the railroad company. We own about 25 miles of sidings. But where the excavation is made—disconnected from our road—the tracks are now owned by the Government.

Mr. TOWNSEND. Those are leased to the Government now?

Mr. CROMWELL. No, sir; they do not operate over them to any extent yet. They dispose of the excavated material over the tracks acquired from the canal company.

Mr. TOWNSEND. Have you any account with the United States, showing what they have paid the railroad company?

Mr. CROMWELL. Yes, sir.

Mr. TOWNSEND. Could you give an itemized account of that?

Mr. CROMWELL. Yes, sir; there is nothing that you want that we can not give you if you will but give us a few days in which to furnish it. The accounts and records of the company are marvels of detail.

Mr. Wanger has requested me to present a copy of the railroad concession now existing with the Republic of Panama, and I do.

It is marked Exhibit 16.

(Thereupon the committee adjourned.)

EXHIBIT 16.

CONCESSIONARY CONTRACT BETWEEN THE UNITED STATES OF COLOMBIA [REPUBLIC OF PANAMA] AND THE PANAMA RAILROAD COMPANY, MADE IN 1867, AS MODIFIED BY THE CONTRACTS MADE IN 1876 AND 1880, AND BY AMENDMENTS OF AUGUST 18, 1891.

CONTRACT REFORMATIVE OF THAT OF 15TH APRIL, 1850, CONCERNING THE CONSTRUCTION OF A RAILROAD FROM ONE OCEAN TO THE OTHER, ACROSS THE ISTHMUS OF PANAMA.

The secretary of finance and public improvements of the United States of Colombia duly authorized by the executive power, on the one part, and on the other George M. Totten, engineer in chief and general agent of the Panama Railroad Company, with full power and authority from the directors of said company; having in consideration the stipulation in Article II of the contract made with said company, and approved by the legislative decree of the 4th of June, 1850; and desiring to provide whatever may be needful for the perfection of the work of the said railroad, in order that it may better answer the necessities of the commerce of the world, and at the same time furnish a sure and permanent revenue to the treasury of the Republic, have agreed to modify and reform the said contract in the terms set forth in the following stipulations:

ARTICLE I.

The Government of the United States of Colombia concedes to the Panama Railroad Company the use and possession, for ninety-nine years, of the railroad constructed by it, and which actually exists between the cities of Colon and Panama. This concession comprises not only the road, but also the buildings, warehouses, wharves, dockyards, telegraph between Colon and Panama, belonging to the road, and in general all the dependencies and other works of which the said company is now in possession, necessary to the service and development of the enterprise, and those which in the future it may establish with the same purpose.

ARTICLE II.

The Government of the Republic binds itself, during the time that the exclusive privilege which is conceded to the company for the working of the railroad remains in force, not to construct for itself, nor to concede to any person or company, by any title whatever, the power to establish any other railroad on the Isthmus of Panama; and it also stipulates that, while the said privilege continues in force, the Government shall not have the power of undertaking for itself, nor permitting any person to undertake, without the concurrence and consent of said company, the opening or working of any maritime canal which may unite the two oceans across the said Isthmus of Panama to the west of the line of Cape Tiburon on the Atlantic and Point Garachiné on the Pacific. But it remains stipulated that the right which is conceded to the company to give its consent does not extend to its opposing the construction of a canal across the Isthmus of Panama (except on the actual route of the railroad itself), but only to its exacting an equitable price for such privilege and as indemnification for the damages which the railroad company may suffer by the rivalry or competition of the canal.

If the sum which may be demanded by the company shall not appear equitable to the Government of the United States of Colombia, then it shall be fixed by arbitrators in New York or Panama, one to be named by the Government and the other by the company, and in case of their not agreeing the two shall name a third, whose decision shall be without appeal.

In pronouncing their decision the arbitrators shall take into consideration the grounds upon which the company rests, and the information which the Government shall give upon the matter, and in view thereof they shall decide without appeal as they may deem most just and equitable.

The sum, whatever it may be, which shall be finally designated, shall belong one-half to the railroad company and one-half to the Government of Colombia.

ARTICLE III.

In compensation of and as a price for these concessions, the railroad company binds itself to pay to the Government of the United States of Colombia one million of dollars in American gold, or in bills on New York payable in the same kind, as the Government may elect, on the day on which this contract shall be approved by Congress, and to pay from the present time, and until the expiration of the present privilege, an annual revenue of \$250,000^a in American gold. The company will make the payments quarterly in New York to the agent designated by the Government of the United States of Colombia, or if the Government should desire, the company will place the money in London or Panama, the Government giving the necessary notice to the company in New York. These quarterly payments shall commence to count from the date of the approval of this contract by Congress.

From the revenues which the Government acquires by this contract there shall be set apart annually during the twenty years twenty-five thousand dollars, which the company shall deliver to the Government of the State of Panama.

ARTICLE IV.

The company binds itself to extend the railroad on the Pacific side to the islands of Naos, Culebra, Perico, and Flamenco, or other place in the bay where there may exist a permanent depth of water for large vessels.

Whereas a certain contract was made between the Government of the United States of Colombia and the Panama Railroad Company, dated the fifth day of July, one thousand eight hundred and sixty-seven, in abrogation of and to take the place of another contract between the same parties of the fifteenth day of April, one thousand eight hundred and fifty, which first-mentioned contract was afterwards approved by the said Government, by legislative decree, on the sixteenth day of August, one thousand eight hundred and sixty-seven, with certain modifications, which modifications were accepted by the said railroad company; and whereas it was stipulated by the said new contract, by Article IV of the same, that the said railroad company should extend its railway to the islands of Naos, Culebra, Perico, and Flamenco, or any other place in the bay of Panama where a permanent anchorage may be found for large vessels, as by reference to said contract will more fully and precisely appear;

And whereas the said railroad company has not yet completed the said work, and denies any present obligation to proceed with the same; and whereas the Congress of the United States of Colombia, on the twenty-sixth day of July, one thousand eight hundred and eighty, by an act passed on that day, authorized the executive power of the said United States of Colombia to enter into negotiations with the Panama Railroad Company, in order to declare it liberated from the obligations it assumed by the aforesaid Article IV of the contract made on the sixteenth day of August, one thousand eight hundred and sixty-seven, for the extension of the said railway in the harbor of Panama as aforesaid, by which act a sum of money was to be paid to the said Republic of the United States of Colombia sufficient, in the judgment of the executive power of the said Government, to compensate for the release from the said article as aforesaid;

And whereas the national executive power of the said Government has appointed Mr. Solomon Koppel as its agent and attorney for the purpose of negotiating with the said railroad company for the abrogation of the said Article IV, and has given to him full, complete, and absolute power to enter into, carry out, and conclude, in the name of the Government of the United States of Colombia, the negotiations for the purpose of abrogating the aforesaid Article IV of the said contract;

And whereas the chief executive of the said Republic of the United States of Colombia has exercised the discretion conferred upon him by the aforesaid act of Congress, by the issue to the said Solomon Koppel of instructions by which the said Solomon Koppel, as such agent and attorney of the Government of the United States of Colombia as aforesaid, is directed to negotiate only for an exemption or abrogation of the aforesaid Article IV for a period of not exceeding thirty consecutive years, and has further exercised the aforesaid discretion and

^a NOTE.—\$225,000 of this annual subsidy was advanced and paid by the company to the Colombian Government in November, 1880, for the full period intervening up to March 27, 1908.

authority conferred by the said act of Congress by fixing the amount to be paid by the said Panama Railroad Company for the abrogation of the said Article IV, and which, by the aforesaid written instructions, is limited to the sum of ten thousand dollars per annum for each of the years during which the said Article IV is suspended or abrogated.

And whereas the said Solomon Koppel is now in the city of New York, and has had a negotiation with the Panama Railroad Company touching the matters aforesaid, and has agreed with the said company to the suspension of the said Article IV for the full period of thirty years from the first day of November, one thousand eight hundred and eighty, upon condition that the said company should pay to the said Government of the United States of Colombia the full sum of ten thousand dollars per annum for each of the said thirty years, making an aggregate payment to the said Government for the suspension and abrogation aforesaid of three hundred thousand dollars in American gold, in all of which actings and doings the said Solomon Koppel has complied exactly with the written instructions of the said chief executive of the United States of Colombia as the same were communicated to him, and as the same have been handed by him to the Panama Railroad Company.

Now, therefore, this agreement witnesseth that, in consideration of the premises and for the aforesaid sum of three hundred thousand dollars in gold coin, payable at the rate of ten thousand dollars in each year from the execution hereof by the Panama Railroad Company to the United States of Colombia, the said Government has fully exonerated, released, and discharged, and does hereby fully exonerate, release, and discharge the said Panama Railroad Company from all its obligations of every nature whatsoever arising upon or growing out of the aforesaid Article IV of the contract of the fifth day of July, one thousand eight hundred and sixty-seven, by which article the said company was bound to extend its railroad on the Pacific side, as is provided in and by the said contract, to which special reference is hereby made, and the said contract, in so far as concerns the extension of the said railroad into the Bay of Panama aforesaid, is hereby, in accordance with the full power granted to the chief executive of the said Government by the Congress of the United States of Colombia, abrogated and annulled. But this abrogation, suspension, and annulment of the said Article IV shall continue only for the period of thirty years from and after the first day of November in the year one thousand eight hundred and eighty, and at the expiration of the said term of thirty years the said Article IV of the said original contract of the fifth day of July, one thousand eight hundred and sixty-seven, shall again be revived, and shall be and remain thereafter in force and effect as the same now exists. And the said Panama Railroad Company, in consideration of the aforesaid suspension, release, and abrogation of the said Article IV for the term and period as aforesaid, hereby agrees to pay to the said Government of the United States of Colombia the just and full sum of three hundred thousand dollars in gold coin as follows, viz: The sum of ten thousand dollars on the first day of November in each and every year, payable in the city of New York, during the said term of thirty years, the first of said annual installments to be payable on the first day of November, which will be in the year one thousand eight hundred and eighty-one, and on each first day of November thereafter until the whole sum of three hundred thousand dollars shall have been paid. And it is further provided and agreed that in case the said Panama Railroad Company, or its successors, shall determine to extend its said line of railway to the islands in the Bay of Panama, or to deep water, in accordance with the terms of said Article IV as originally agreed, and shall actually construct the same, that then and from thenceforward the annual payment of ten thousand dollars for each of said thirty years shall cease for the remainder of said term then unexpired, anything herein contained to the contrary in any wise notwithstanding; but this termination of said annual payments shall not take effect until the expiration of six months after said Panama Railroad Company shall have given notice to the Government of the United States of Colombia of the actual completion of said extended line in the Bay of Panama as aforesaid.—[Contract of 1880.]

ARTICLE V.

During the whole term of this privilege the company shall have exclusive right to establish across the Isthmus of Panama within the zone indicated in article second, any class of carriage roads whatever, from one ocean to the other. The Colombian Government binds itself not to undertake for itself, nor to permit any other company or person to undertake within said zone any other carriage road,

either macadamized, or of plank, or of any other class suitable for the use of wheeled vehicles, between the two oceans across the Isthmus of Panama. It being, nevertheless, well understood that the privilege of which this article treats can not and must not in any manner prevent the construction of any kind of roads in a direction distinct from that expressed, nor the completing, preserving, and improving of roads already existing, or which are actually being constructed on said Isthmus.

ARTICLE VI.

The company shall have the right for the whole term of this privilege:

1st. To regulate and direct the use of the ports, embarking and disembarking places, wharves, anchorage grounds, etc., at the terminl of the railroad, and to establish agents with powers to carry into effect the regulations that it may make in this particular in conformity with the laws of the Republic. These regulations shall be submitted to the approval of the executive power, without which they can not take effect. The executive power may refuse its approbation, alter and revoke them as it may deem convenient;

2d. To use the embarking and disembarking places, wharves, etc., that it has constructed or may construct in the ports situated at the two extremes of the road;

3d. To use the landings necessary, and especially those designated for the storage and free deposit of all goods and merchandise admitted for transit over the Isthmus on the railroad constructed by the company. By virtue of this privilege the company may collect as compensation for the use of the line of communication, means of transportation, landings, warehouses, and establishments of all kinds belonging to it, such tolls for transporting, wharfage, storage, and labor as it may deem proper to establish.

The company continues in the exercise of all the rights conceded to it in the 6th article of the contract of 5th of July, 1867. Consequently it may regulate and direct the use of the ports, embarking and disembarking places, wharves, anchorage grounds, etc., at the terminl of the railroad, and establish agents with powers to carry into effect the regulations that it may make in this particular in conformity with the laws of the Republic. These regulations shall be submitted to the approval of the executive power, without which they can not take effect: but the executive power, after having once approved them, can not change them nor revoke them without the consent of the company.—[Art. I of Contract of 1876.]

ARTICLE VII.

The executive power shall determine the forms to be observed in the landing of goods on either ocean; and the intervention therein of the officers of the Republic to prevent the effects destined for transit from one ocean to the other from being left on the way or fraudulently introduced for internal consumption. Said precautions shall be such as may tend to prevent all frauds to the injury of the public revenue without delaying or embarrassing the rapid dispatch and transit of passengers and packages of merchandise, luggage, and goods of all kinds which may be subjects of lawful commerce.

ARTICLE VIII.

The company may give to the actual railroad a different direction from that which it now has, and which it may deem most favorable to the enterprise, it being free to choose the points of departure and arrival which may appear to it most advantageous and most convenient for the entrance and anchorage of vessels, or for ports properly so called, and for embarking places, dry docks, places for lighterage, landings, warehouses, stations, hotels, and establishments of all kinds, and this without prejudice to what is stipulated in article fourth of this contract.

ARTICLE IX.

The Government of the United States of Colombia ratifies the concession made to the Panama Railroad Company by the contract of the 15th of April, 1850:

1st. Of the lands that it has required and that it may require for the establishment of the line of railway in its whole extent, provided such lands belong to the Government;

2d. Of the lands which were necessary for seaports, dry docks, river ports, landings, embarking places, places for lighterage, warehouses, stations, hotels, and generally for all the necessities of the service of the railroad, always provided that such lands shall be the property of the Republic;

3d. Of the concession made by gratuitous title and in perpetuity of sixty-four thousand hectares of vacant lands in the territory of the State of Panama, with exception of the islands in both oceans and of the districts which formed on the 1st of January, 1849, the territories of "Bocas del Toro" and of "Daríen," limits of which were fixed by the law of the 9th of January, 1855. This concession may be extended to ninety-six thousand hectares if there shall be that number disposable within the limits of the ancient provinces of Panama and Veraguas in such manner that the Government can adjudicate them as vacant lands; and the company shall have the right to select them in the continental part of said provinces as they may deem most convenient. But it is stipulated that in the lands which the company may select on the line of road, and its vicinity, there shall positively be left regular intervals equivalent in extent to those (tracts) which shall be given to the company, in order that the Government may be enabled to make grants or sales of land for other establishments which may desire to locate themselves on the line and in the neighborhood of the road.

Paragraph. The lands granted to the company by sections first and second of this article shall be returned to the Republic at the expiration of the present privilege in the terms and with the formalities prescribed in this contract.

ARTICLE X.

In the grant of vacant lands in perpetuity made to the company by the contract of 1850 and ratified in section third of Article IX of this contract there is not included the number of hectares contained in the island of "Manzanillo," in the Bay of "Limón," but they are included in the grants treated of in the first and second sections of the article cited, with the exception of four hectares which the Government reserves as an area for the construction of buildings for public offices, schoolhouses, prison, and other objects of public use, which shall be delivered by the company properly graded and in condition for building upon them. But it is understood that in the designation by the Government of the place or places in which it desires to take the four hectares reserved to it by this article, it shall not choose those which may be necessary for the construction and service of the railway and its dependencies, nor those which may be already occupied by buildings now standing or which are to be reconstructed.

This selection may be made by the Government, in anticipation, as it may see fit, in accordance with the plan of the city, in order that the lands may be delivered to it so soon as the nature of the ground permits of the grading being carried on.

ARTICLE XI.

The lands conceded to the company by article ninth, section third, shall be delivered as may be requested on compliance with the legal formalities established for such cases, and it being incumbent on the company to prove their character as vacant lands, to measure them, and to make the respective plans. The adjudication of said lands shall be made by the executive power, and from the time the declaration is made in the premises they shall be considered definitely adjudicated to the company; but the provisional adjudication shall be made by the President of the State of Panama, submitted always to the examination and approval of the national executive power, and while not disapproved it will only produce the effect of preventing any ulterior grant of the same lands in favor of a third party. The Republic is not bound in any case to the vacating and guaranteeing the title of the vacant lands which may be adjudicated to the company.

The executive power will fix a time in agreement with the company within which the latter shall be bound to designate the vacant lands to which it has the right.

ARTICLE XII.

When the lands which may be required for the extension of the line of the railroad, as referred to in article fourth of this contract, or for changes of direction of the line, or for the establishment of a second line of rails, shall be the

property of private individuals, the company shall have the right to obtain them on an official appraisement and the just indemnification of the proprietor. in conformity with the dispositions of the law of the 22d of May, 1866, "concerning the mode of proceeding in those civil cases, the cognizance of which appertains to the tribunals of the Union."

ARTICLE XIII.

The railroad enterprise is esteemed of public utility.

ARTICLE XIV.

The company is authorized to propose to the executive power the regulations which it may judge proper for the police, security, and preservation of its ways of communication, ports, works, and establishments of all kinds; but such regulations shall not be put in force without the express approval of the executive power, which even after having approved them may amend or annul them as it may deem proper, proceeding always in conformity with the laws of the Republic.

The company continues authorized to propose to the executive power the regulations which it may judge proper for the police, security, and preservation of its ways of communication, ports, works, and establishments of all kinds.

Such regulations shall not be carried into effect without the express approval of the executive power; but the latter, after having approved them, can not change them nor annul them without the consent of the company.—[Art. II of Contract of 1876.]

ARTICLE XV.

The tariff of charges and freights on money, carriage of merchandise, and transport of travellers over the railroad, board and storage in the depots, and establishments of the company, shall be fixed by it, and modified as it may deem best for its interests, but it shall be bound to inform the local authorities of said tariffs and modifications with at least thirty days' previous notice.

ARTICLE XVI.

The company binds itself to transport gratis over the railroad the National and State mails that may have to be carried from ocean to ocean or to any intermediate point; and it may make such pecuniary arrangements as it thinks proper for the transportation of foreign mails, the passage of which over the Isthmus is declared free to all nations; but the Government of the Republic may prohibit the passage by the railroad of the mails of those nations that may be at war with it, in which case the company shall refuse to carry them over the railroad.

ARTICLE XVII.

The company may freely introduce into the Isthmus without payment of duties or imposts of any kind all the implements, machines, tools, materials, provisions, and manufactured articles intended for the construction, working, and preservation of the railroad, and the provisioning of the workmen employed on it.

ARTICLE XVIII.

The company is exempt from paying taxes or contributions, national, municipal of the State, or of any other kind, upon the railroad, its warehouses, wharves, machines, or other works, things, and effects of any kind belonging to it and which, in the judgment of the executive power, are necessary for the service of the said railroad and its dependencies.

ARTICLE XIX.

In compensation for these exemptions, the company binds itself to transport gratuitously and without the Government having to pay anything either for freight or for any other cause, the troops, chiefs, and officers, and their equipage, ammunition, armament, clothing, and all similar effects that may belong

to, are, or may be destined for the immediate service of the government of the Republic, or of the State of Panama, as also their officials in service or in commission, and those individuals who with their families and baggage may come to the country in the character of emigrants and of new settlers, with the permanent character of such, for account of the Government, up to the number of 2,000 annually. The executive power shall dictate the provisions as it may deem proper in such cases, in order to prevent those passengers whose entry into Colombian territory may be purely accidental from availing themselves of this concession.

The executive power of the union shall dictate the provisions which may be necessary, at the request of the company, to prevent abuses in the gratuitous passage which Article XIX of the aforesaid contract concedes to national employees and those of the State of Panama.—[Art. IV of contract of 1876.]

ARTICLE XX.

Colombian productions shall be transported by the railroad during the first twenty years of this contract, paying only one-half the rates of freight or transportation previously fixed by the company for foreign products of the same class, but this term being concluded they shall pay a charge or freight not exceeding two-thirds of that previously fixed in the tariff of the company—tariff rates which the company can not increase in future in regard to Colombian productions. (See amendments of Aug. 18th, 1891.)

In order that Colombian products may be transported by the railroad under the conditions of Article XX of the same contract, there must precede a declaration of the shipper, duly attested by the bill of lading of shipment, with a certificate of the administrator of the national treasury at the port of shipment or other similar document, at the time of offering them, that such products are really Colombian; a necessary condition, without which there shall be no ground for any claim.—[Art. V of contract of 1876.]

ARTICLE XXI.

Passengers, money, merchandise, objects, and effects of all kinds destined for interoceanic transit over the railroad, while they remain in the warehouses and depots of the company, or in its possession, are exempt from dues and taxes, national, municipal of the State, or any other description. In like manner the vessels which may enter the ports at the termini of the railroad, as well as their officers, crews, and their agents, shall be exempt from the payment of tonnage dues or of any other tax or contribution whatever on account of service applied directly to the interoceanic transit.

ARTICLE XXII.

Travellers passing from one sea to the other over the railroad shall not require any passports to pass over it, excepting in cases of foreign war or internal commotion, when the Government may deem the presentation of passports expedient for the security of the country or the preservation of public order. Nevertheless, persons who have been expelled from the territory of the Republic, or other individuals whom the laws forbid an entrance into the country, shall not pass over the railroad.

ARTICLE XXIII.

In case the present privilege conceded to the company shall be declared forfeited by the competent tribunal, it shall return to the Republic such lands granted in ownership, and by gratuitous title, as may not be already transferred in fee to the third party, and it shall have no right to exact any indemnification for improvements, nor for any other cause.

ARTICLE XXIV.

It is obligatory upon the company to make a survey of the lands, with notice to the owners of adjoining lands, and to make a topographical plan of the road, with all its dependencies, such as bridges, aqueducts, viaducts, and other works which it may have constructed for the service of the railroad, in order that by

means of such plan it may be clearly known what the company holds in ownership, and to what purpose the exemptions provided for are destined.

ARTICLE XXV.

The company binds itself to execute constantly, with all care, punctuality and celerity, the transportation of the travellers, cattle, merchandise, goods and materials of all kinds that may be confided to it, payment being made of the charges and prices of transportation that may be fixed in the respective tariff. The disposition of this article is, nevertheless, no obstacle to the company's entering into special contracts for the transportation of articles whose bulk, weight, or exceptional nature do not allow of their freights being fixed beforehand.

The provision of the final part of Article XXV of the aforesaid contract of 1867, by which the company was permitted to enter into special contracts for the transportation of articles whose bulk, weight, or exceptional nature would not allow of their freights being fixed beforehand, is made applicable to all kinds of articles of commerce.—[Art. III of Contract of 1876.]

ARTICLE XXVI.

Vessels of nations which may be at war with the United States of Colombia shall not be admitted to the ports situated at either extremity of the railroad, nor shall the productions, effects, and property of such nations enjoy the free transit of the Isthmus over the said road.

ARTICLE XXVII.

It is obligatory upon the company to maintain constantly in Panama or Colon a representative with sufficient power and authority to treat, whenever it may be necessary, personally with the Government on matters having relation to the enterprise.

ARTICLE XXVIII.

The present privilege cannot be ceded or transferred to any foreign government, that is to say, to any government existing outside of Colombian territory, under pain of forfeiture of the said privilege by the mere act of attempting or verifying such cession or transfer, which act, from the present time, is declared absolutely null and of no value or effect. This privilege shall also be forfeited in case the railroad company shall not execute the transportation during a period exceeding four consecutive months (fortuitous cases excepted).

This privilege will also be forfeited by the failure of payment, after being one year overdue of any of the quarterly payments. Delay in the payments for a less period subjects the company to the payment of interest at the rate of seven per cent per annum.

None of the cases of forfeiture of the privilege fixed in Article XXVIII shall go into effect until the resolution of the government in which the declaration of forfeiture is made is served in due form, and at least three months in advance, on the company and on the agents of the persons to whom the government may transfer or hypothecate the revenue to which it is entitled by Article III, if said transfer or hypothecation shall have taken place; it being understood that if, after the notification has been given, and during the aforesaid three months, the company, or the interested persons of whom mention has been made, shall satisfy the Government, causing the reason for complaint or forfeiture to disappear, the said declaration shall not be carried into effect.—[Art. VI of Contract of 1876.]

The Government reserves to itself the right to hypothecate, in whole or in part, the revenue, of which mention has been made in Article VI of this contract (except the right of the State of Panama to the annual proportion of \$25,000), before the time at which said revenue is to be paid, and whatever may be hypothecated shall be payable in such a manner as the Government may direct; and the railroad company binds itself, on being notified of any transfer or hypothecation, to accept it and to make payment at the maturity of the instalments to the persons or parties in whose favor the transfer or hypothecation may have been made.—[Art. VIII of Contract of 1876.]

ARTICLE XXIX.

In case of the forfeiture of this privilege from any cause, the ownership and full possession of the railroad, with all its dependencies, appurtenances, and accessories, shall pass to the Republic without the company's having thereby any right to indemnification or remuneration of any kind.

ARTICLE XXX.

The Government of the Republic binds itself to protect and maintain in all their integrity the rights of the company resulting from the present contract, provided the company complies punctually on its part with the duties and obligations which it undertakes, and that the privilege continues in force.

ARTICLE XXXI.

The right which said Republic reserved to itself by the contract of the 15th of April, 1850, to redeem the privilege of the company, being especially hypothecated as an additional security for the loan contracted by the said Republic in London under date of the 1st of October, 1863, it is stipulated that the products from the railroad, which by this contract belong to the Government, remain subsidiarily applicable to the payment of the obligations of the Government of the Republic, in regard to that loan, whether it be to complete the annual installments which the Government is obliged to pay in London on account of the interest and amortization of the capital, or to redeem the bonds of the loan at par, if in 1874 their redemption shall not have been completed.

ARTICLE XXXII.

In consequence of the stipulation in article third, the Government renounces the benefit or participation of three per cent, which by article fifty-five of the primitive contract it had in the net products of the enterprise, and the quota of five per cent which had also been reserved in its favor by article thirty of said contract in the transportation of correspondence, and which quota it was stipulated should not be less than ten thousand dollars annually. The account of these profits shall be liquidated immediately in the terms fixed by article fifty-five up to the day on which the present contract begins to rule and have effect, and the payment of the balance which may result in favor of the Republic shall be made by the company in New York to the order of the Government.

ARTICLE XXXIII.

Questions which may arise between the Government of the Republic and the railroad company concerning the understanding or the fulfillment of this contract, shall be decided by the courts and tribunals of the Colombian Union according to the constitution and laws of the Republic.

Questions that may arise between the Government of the Republic and the railroad company, as to the understanding or the execution of this contract, and of those of 1850 and 1867, to which this one refers, shall be decided without appeal by the federal supreme court of the Colombian Union, without the intervention of any other tribunal.—[Art. VII of Contract of 1876.]

ARTICLE XXXV.

The ninety-nine years of the duration of the privilege conceded by this contract shall be counted from the date on which it may be approved by the Congress.^a

ARTICLE XXXVI.

At the expiration of the term of the privilege, and by the sole fact of its expiration, the Government of the Colombian Union shall be substituted in all the rights of the company, and shall enter immediately into the enjoyment of

^a NOTE.—Which was August 16, 1867.

the line of communication, of all its fixtures, of all its dependencies, and of all its products. The company shall be bound to deliver to the Government, in good order, the roads, the works which compose them, and their dependencies, such as landing and discharging places, offices, machines, and in general whatever movable or immovable objects, whether destined for the especial service of transportation or applicable to any other object connected with the enterprise.

ARTICLE XXXVII.

The present contract contains all the concessions and privileges which the existing Panama Railroad Company has acquired for the future. In virtue of which it is declared, and the parties hereby expressly agree, that at no time can the company claim rights or privileges which are clearly not contained in this contract, unless they may be granted by subsequent acts.

ARTICLE XXXVIII.

The contract of the 15th of April, 1850, approved by the legislative decree of the 4th of June of the same year, is hereby reformed by the terms of the present contract; and extended as it is in thirty-eight articles, it shall be submitted to the approval of the Executive Power of the Republic, and, when obtained, it shall be presented to Congress, the consent of which is required in order that, being enacted into law, it may be carried into effect.*

AMENDMENTS AGREED UPON BETWEEN THE PANAMA RAILROAD COMPANY AND THE REPUBLIC OF COLOMBIA, AUGUST 18TH, 1891.

ARTICLE I.

Article twenty of the contract of July 5th, 1867, approved by law No. 46 of the same year, shall read as follows:

From and after July 1st, 1892, Colombian products passing over the Panama Railroad shall pay only half of the rate of freight established by the company for foreign products of the same class.

ARTICLE II.

Salt from the Colombian salt pits of the Atlantic coast intended for the national ports of the Pacific shall be transported by the same railroad company at the following rates:

A quantity not exceeding six millions of kilograms each year, and which shall in no case exceed 1,000 tons per month, at the rate of two dollars (\$2) gold per ton without any deduction. Shipments of the salt referred to that may exceed the quantity above stated shall pay the rate that is established for the other Colombian products in the previous article.

[Translation.]

MODIFICACIONES CONVENIDAS ENTRE LA COMPAÑIA DEL FERROCARRIL DE PANAMÁ Y LA REPUBLICA DE COLOMBIA, FECHA 18 DE AGOSTO DE 1891.

ARTICULO I.

El artículo 20 del Contrato de 5 de Julio de 1867, aprobado por la ley 46 del mismo año, se modifica modo siguiente:

Desde el 1° de Julio de 1892, los productos colombianos que pasen por el Ferrocarril de Panamá pagarán solamente la mitad de la rata de fletes establecida por la Compañía para los productos extranjeros de la misma clase.

* NOTE.—Congress approved August 16, 1867.

ARTICULO II.

Le sal de las salinas colombianas de la Costa del Atlantico que se destine a los puertos nacionales del Pacifico será trasportada por la Compañia del Ferrocarril a las ratas siguientes:

Una cantidad que no exceda de seis millones de kilogramos cada año, y que no pase en ningun caso de mil toneladas mensuales, a la rata de dos pesos (\$2), oro, por tonelada sin deduccion alguna. Los embarques de la sal referida que excedan de la cantidad arriba expresada, pagarán la rata que se fija para los demas productos colombianos en el articulo anterior.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE;

HOUSE OF REPRESENTATIVES,

Washington, D. C., February 20, 1905.

The committee met at 10.30 o'clock a. m., Hon. James R. Mann (acting chairman) in the chair.

STATEMENT OF MR. DRAKE—Continued.

Mr. TOWNSEND. You were asked to bring us some information this morning?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Have you done so?

Mr. DRAKE. I have, sir. I was asked to indicate the amounts paid to members of the committee and members of the board of directors, and also the dividends which have been paid to those gentlemen. I submit a statement here, taken from the books, giving all the details in regard to those matters.

The statement referred to is here inserted in the record, as follows: (Exhibit 15 not furnished.)

Mr. TOWNSEND. Mr. Drake, have you prepared an opinion as to what should be the policy of the Government in continuing the line of steamers in connection with the railroad?

Mr. DRAKE. I have, sir. I have prepared an expression of my opinion upon three questions here, the three questions that have been submitted to me for consideration; one as to the continuance of the steamship line, one as to the advisability of moving the general offices of the company to the Isthmus, and the third as to the advisability of discontinuing the contract with the Pacific Mail Steamship Company. [Reading.]

Up to this moment I feel that I have entirely failed, for various reasons, to get before your committee an intelligent, logical statement of my opinions on three of the most important features of the question before you relative to the policy to be adopted by the United States Government in the operation of the Panama Railroad, of which it has become in fact the principal owner, viz:

1. The proposition to discontinue the operation of the company's steamship line between New York and Colon.

2. The proposition that the general offices of the company in New York be closed and the management and operation of the railroad be entirely transferred to the chief engineer of the canal company on the Isthmus, provision being made to care for its fiscal affairs only in New York.

3. The advisability of continuing the present contract with the Pacific Mail Steamship Company, or of terminating it as now arranged and refusing to enter into exclusive traffic relations with that or any other steamship company on the Pacific coast.

Regarding the first item, viz, the proposition to discontinue the steamship line, I think I can safely assert that the end sought to be obtained by that step, viz, that the line will be replaced by a sufficient amount of tonnage of both foreign and domestic registry which will be attracted to Colon to permanently provide all necessary speedy regular and efficient rates, will not be realized to the satisfaction of any but the cheaply operated foreign lines now seeking to enter the trade to the ultimate exclusion (by reason of lower cost of construction and operation of their ships) of practically all vessels of American registry, as is practically the case at this time with all foreign ports on the Atlantic coast of North and South America, except those now served by the Ward, Red, Clyde, and Porto Rico steamship companies; and some of the business of those American lines is now carried in foreign bottoms.

If we consider the proposition that the Government continue to operate the steamship line, but practically only for its own convenience in the transportation of passengers, mails, baggage, specie, material, and supplies belonging to the canal company or connected with the canal construction at such special reduced rates as would naturally be applied, there can, I believe, be but one result—the operation of the line will be at a loss, instead of a source of revenue. Further, such a course would deprive the various lines it is proposed to favor, now seeking to enter the traffic, of anticipated earnings and make surer the probability that the volume of business would not warrant them in providing for other than a port-of-call service; hence the more lines that enter the business the more certain will be the unfavorable result of their competition to themselves.

If the question of the entire discontinuance of the steamship lines be considered from the standpoint of earnings or revenue for the railroad or the continuance of present control of its own business, I submit that a discontinuance of the line would result in a total loss to the railroad company of all the net earnings* of the steamship line, which for 1904 were over \$175,000 and for the past ten years over \$1,125,000 and which may be expected hereafter to be very much increased when the canal construction actually begins. In reaching the above result of earnings I have shown elsewhere in my testimony that the steamship line has been neither unduly favored nor discriminated against.

LOSS OF BUSINESS CONSEQUENT UPON THE ABANDONMENT OF STEAMSHIP LINE.

The Panama Steamship Line furnishes, and has furnished, the only direct and regular means of transportation between New York and the Isthmus, and it is only by furnishing such direct and regular transportation that the company has been enabled to maintain the earnings of the railroad at the figure which they have reached. All other lines running to Colon use that only as a port of call, giving thus a service slow, irregular, and not attractive to shippers.

If this company were to abandon the steamship line there would be no longer such direct and regular service. Various other companies have indicated a readiness to take part in transportation between the United States and Colon, but only by making Colon a port of call. A certain amount of traffic would undoubtedly be carried by such

vessels, but they would be unable to furnish the transportation requisite to maintain the business of the route, which requires a prompt, regular, and trustworthy service, not subject to the delays which inevitably occur where a port is only one of a number at which a vessel calls.

Nor can it be expected that a new direct line between New York and Colon would be established to take the place of the company's line. The lines from the United States making Colon only a port of call could take enough of the business offering to make such a direct line unprofitable. Regular and frequent sailings can not be expected except under the present system. At the present time the United Fruit Company has been making Colon a port of call, at the request of this company, for its New Orleans boats; our object in arranging this being to accommodate the Middle West and relieve a threatened pressure on the facilities of our line. But though we have made favorable arrangements with them they have not been willing to take any freight from Colon to the United States, finding cargo from other ports more profitable.

To secure traffic shippers must be assured that they can rely upon an opportunity to dispatch their goods at regular and reasonably frequent intervals, and that the goods will be forwarded to their destination without undue delay. These things are as important as the rates at which the goods are transported. For the great bulk of profitable traffic low rates will not compensate for uncertainty in transportation, and we have always found it necessary to be vigilant to secure this. Any failure in this respect is immediately reflected in the amount of business seeking the route, which falls with every such failure and rises with every improvement. For example, since the establishment of a weekly instead of a ten-day service in 1899 the total outward-bound business of the steamship line has increased from 53,206 tons in 1896, 53,230 tons in 1897, and 51,814 tons in 1898 to a total of 107,064 tons in 1904; while the homeward business has increased from 24,254 tons in 1896, 31,966 tons in 1897, and 34,462 tons in 1898 to 62,230 tons in 1904. In the same period, and under the same influences, the tonnage to San Francisco rose from 22,561 tons in 1896 to 39,180 tons in 1904; while that from San Francisco to New York rose from 13,096 tons in 1896 to 30,272 tons in 1904.

In the case of the European lines, we have often found it necessary to make use of our ability to ship goods to Europe via New York (to which I shall hereafter refer) in order to overcome difficulties that arose from the fact that none of those lines were ready to furnish the service necessary to obtain and hold the traffic. The same difficulty would arise in the case of lines from the United States, and if this company's line were abandoned there would be no way of meeting it.

By its bills of lading and those which are issued for transportation over the railroad to points beyond, the company reserves the right of forwarding from Colon by such carrier as it should select. While the company has run its own steamship line from New York this provision has been of great value. If freight bound to Europe was not properly and promptly taken care of by the European lines running to Colon, or if rates were not made which would enable this company to secure business profitable to it, the company has been in a position to forward the freight by its own line to New York, and thence to Europe, which has given it control of the situation and enabled it to

draw to the Isthmus much traffic which it would otherwise have lost. While it has very rarely been necessary for the company actually to take the step of forwarding the goods via New York, it has frequently had occasion to threaten to do so, and the possibility that it might take this course has always been sufficient to secure for the railroad from the trans-Atlantic lines such advantages in service and rates as were necessary to draw to it the freight desired.

With the abandonment of the company's own steamship line it would suffer, then, in two ways. It would lose all power of insuring prompt and efficient service by the trans-Atlantic lines and would be left without any adequate connection with New York, while it would be powerless to control such connection as it might be able to secure. The company's experience has been ample to show that a great diminution in the business passing over the Isthmus would necessarily follow. The business between New York and San Francisco would, in my opinion, be nearly if not quite extinguished. Always exposed to severe competition from the transcontinental lines, to which will shortly be added that by the Tehuantepec, Honduras, and Guatemala railroads, the Panama route can hold its business only by furnishing regular, prompt, and efficient service. Nor would it, in my opinion, be possible to obtain a connection on the Pacific if the line from New York to Colon were less efficient and regular than now. It has always been difficult to secure regular transportation between Panama and San Francisco, and if a carrier on that route can not reckon upon prompt and regular service between Colon and New York, it will be impossible probably to induce him to furnish satisfactory service for a business which is not in itself attractive under any circumstances, nor, if such connection could be obtained, would it be possible to secure the business. The bulk of the freight offering at San Francisco for New York requires particularly prompt and regular dispatch. Wine, for example, which is the most important single item in that business, suffers greatly from delay in transportation, and complaints are always made when such delay occurs in respect of it.

In another way this power of forwarding the goods to Europe via New York has greatly affected the net results of the company's operations.

Mr. SHACKLEFORD. Would it interrupt you if I asked you a question right there?

Mr. DRAKE. No, sir; not at all.

Mr. SHACKLEFORD. Is there not a large amount of wine produced in California and shipped to Hamburg by way of the Straits of Magellan, by way of that Hamburg-American Line?

Mr. DRAKE. Yes, sir; I believe there is a quantity carried by the Kosmos Line. You can get full statistics of the output of wine, and—

Mr. SHACKLEFORD. I just wanted to know, in a general way, whether it is not a fact—

Mr. DRAKE. Yes, sir; it is.

Mr. SHACKLEFORD. Whether there is not a large amount of wine going through the Straits of Magellan, instead of across the Isthmus?

Mr. DRAKE. Yes, sir. A considerable quantity by the Kosmos Line, which operates jointly with the Hamburg-American Line.

Mr. SHACKLEFORD. They are not allowed to ship across the Isthmus on the same terms as other lines?

Mr. DRAKE. They have been offered the advantage, but have not availed themselves of it up to this time. (Reading:)

It has frequently been the case that European lines running to Colon, seeking freight more profitable to themselves at various other ports of call, have left upon the Isthmus goods which they should have transported upon their own vessels, which have occupied the warehouses and cars of the company, at one time as many as 100 cars filled with goods which those vessels might have taken, being in the yards of the company at Colon. By the threat of transporting these goods to Europe via New York the company has always been able to compel the trans-Atlantic carriers to furnish adequate service, and thus has saved itself from the great expense which such an accumulation of freight involves. This advantage the company would of course lose if it abandoned its steamship line.

TRANSPORTATION OF GOODS FOR THE COMPANY.

The net earnings and gross receipts of the steamship line, as estimated above, do not really indicate the whole direct advantage which the company obtains from its ownership of the line. The very large amount of supplies and stores for itself and its employees, which the company is continually transporting from New York to Colon, has been carried upon its steamers at a rate very much lower than that at which other freight has been carried. This advantage would of course disappear with the abandonment of the line, and should be taken into account in estimating its effect upon the revenues of the company. In the year 1904, for example, there were transported by the steamship line 5,000 tons of supplies for the railroad company and its employees, at a price of \$5 per long ton, amounting to \$25,000. It is impossible, exactly, to estimate what the additional amount of freight would have been had this business been carried for outside shippers, the rates varying with the character of the goods, and goods not for the company being taken on a measurement basis when that is more favorable to the ship. I think that, on a conservative estimate, this freight of \$25,000 would have to be doubled in cost to the company if the goods were moved by an outside carrier.

The loss to the company from the direct earnings of the steamship line, with the additional loss from higher rates on supplies, alone can not be estimated with accuracy. The sum of these, may be, I think, properly set at from \$225,000 to \$250,000 per annum, but will be greater as business to the Isthmus increases.

The loss in other ways will, in my opinion, be far greater in amount, but data are lacking to estimate it properly, for nobody can say how much the railroad will suffer from the loss of all control over connecting carriers, and of all powers to maintain suitable connections with New York, which will follow the abandonment of the line. The San Francisco business will, I am quite clear, be wholly, or almost wholly, lost, and the earnings of the railroad alone from this business amounted in 1904 to \$106,951 on west-bound business, and \$67,293.62 on east-bound business. Concerning the trans-Atlantic business it is impossible to speak except generally. The increasing growth of traffic between Europe and the west coast, via the Straits of Magellan will render it easier for this trade to take another route, and it has been our experience that only our ability to control the situation through our steamship line has enabled us to keep this business in a satisfactory condition. It is to us very clear that to surrender the various advantages of this line would imperil the ability of the railroad to maintain itself and pay its fixed charges, which latter now, and will for the next twenty years, amount to \$500,000 per annum.

That is all I have to say on that first item. With respect to the second item, regarding the advisability of transferring the company's general office to the Isthmus—I submit, that the respective terminals of the company's through line are New York and Panama, and it follows that the continuance of the company's general office in New York, the commercial metropolis of the Western Hemisphere, is of paramount necessity. The progressive development of its traffic and revenue can justly be attributed to the location of headquarters in New York. As at present conducted, the company's business requires and secures the faithful, intelligent, and uninterrupted services of every employee regularly attached to that office.

The fiscal business of the company, which involves collection of gross earnings, the payment of expenses of every character, the redemption and cancellation of bonds, the payment of interest charges and dividends, the payment of freight balances to agencies of connecting lines, the drawing of bills of exchange, the settlement of claims for loss and damage to cargo and property, and the handling of gold and silver funds, together with the deposit and withdrawal of money with banks and trust companies, is conducted at the company's New York office with greater precaution, security, and less expense than would result from the employment of outside agents. Under the direction and control of the executive officers of the company traffic agreements are formulated and carried out from New York and the resulting benefits in gross earnings from connection with twelve important steamship lines in this country and abroad collected and deposited in bank.

The character and quantity of material and supplies required for the construction, maintenance, and operation of the company's railroad and steamship lines is determined and proper measures taken to insure its purchasing and forwarding under the best possible conditions.

The skilled labor required at the Isthmus is sought and engaged in New York under the most careful scrutiny as to character and ability, and the high character of the company's present staff of employees attests the fact.

The appointment of agents of every character—that is, special agents, hiring agents, traveling agents, and legal representatives—for the company at distant points is passed upon and settled in New York.

The bonding of all the company's subordinate officials who have the custody or handling of its finances is effected in New York.

The insurance upon ship's property and cargo at home and abroad belonging to or in care of the company is effected in New York.

The charter of outside vessels to transport the company's bulky material and supplies is effected in New York.

It is, besides, a most noteworthy fact that 50 per cent of the railroad company's through traffic originates or terminates in New York, and the collection of 40 per cent of the total freight earnings of the company and of its connecting lines is made there by this company and settlements effected with the resident agents, and at the risk of repeating myself somewhat I beg you to note that the total gross earnings of the company per annum of almost three millions of dollars is made in New York, as is the disbursement of the total of two and one quarter millions of dollars of expenses and fixed charges, without the loss or misappropriation of one dollar.

I think a careful review of the situation should convince the most earnest advocate of the change that it is inadvisable and against the best interests of the company, and that none of the business referred to could be performed as well (if it could be done at all) at the Isthmus as in New York.

From a traffic standpoint I submit that to close the New York office and transfer the management and operation of the railroad to the Isthmus and attempt to regulate the company's traffic relations at that point would be equivalent to a complete surrender of the company's control of its business into the hands of rival or competing interests,

for however simple its accomplishment may appear, a slight study will prove its impracticability. With an aggregate traffic of 400,000 tons carried to the Isthmus by 12 important steamship lines for transportation over the railroad in 1904, the handling of the attendant cargo papers, the verification of inserted weights, measurements, and rates, the certification to the treasurer of the moneys due to and by the company, together with the correspondence and accounting incident thereto, at present requires the service of a clerical force such as is now engaged in New York, trained and competent, faithfully and constantly employed, and not overpaid.

Double the force would be required at the Isthmus and the work could not be as well and speedily accomplished, for climatic and sanitary conditions there make necessary the allowance of vacations of two months with leave of absence pay to Americans and Europeans engaged there in order to insure good clerical work, and the rates of pay to such employees are 25 to 50 per cent higher than in New York. Again, it is not to be expected that the traffic interests of the railroad would be as carefully safeguarded by any official whose chief purpose is to construct the canal, and whose tendency, therefore, would be to favor that work, as by officials especially employed to facilitate the safe and speedy transportation of cargo, and instructed to cooperate in every possible way with canal interests and work.

Regarding the proposition that has been made to open the terminals of the company at both ends to all steamship lines on both oceans and establish a low transfer tariff over the railroad at uniform rates to all, I submit that the attempt was made by the French Canal Company, which began by applying a uniform rate to all cargo that originated in Mexico and Central America, with the result that the earnings of the railroad were seriously reduced while rates previously established were not reduced by the connecting lines because the traffic would stand them, and those lines quarreled over the division of the reduction of its proportion allowed by the railroad. Years of effort were required to restore the railroad company to its previous status as to division of rates after the attempt had been abandoned. There is no reason to suppose that a better outcome could be secured now.

To conclude on this subject, I submit my opinion that only so long as any shares of the company's stock was held by others than the United States Government will the necessity continue for the existence of a board of directors with subcommittees and officials called for by the company's articles of incorporation, as the company's entire business can be conducted by a competent chief executive responsible to the owner (the United States Government) with subordinates to head the several departments, as at present.

Regarding the third item, viz, "The advisability of continuing the present contract with the Pacific Mail Steamship Company, or of terminating it as now arranged, etc.," I can not do better than submit a letter on the subject which was prepared after a most careful study of the company's experience, which letter was unanimously approved by the company's board of directors. Its conclusions are unanswerable if the company's policy is to be governed by a purpose to continue the development of its business on a profitable basis.

The questions now presented have two aspects:

First, as to the business operation and practical results of the contract between this company and the Pacific Mail Steamship Company; and, second, as to the legality of the contract.

(1) AS TO THE OPERATION AND RESULTS.

The Panama Railroad Company is not merely a railroad corporation. Its charter powers extend to the operation of both a railroad and steamships. It is in the exercise of this express power that the corporation has from time to time, during the fifty years of its life, operated its own steamship lines on both sides of the Isthmus, in connection with the railroad, thus making a continuous line and service.

Prior to 1872 the Panama Railroad Company had operated its own steamship line between Panama and Central America and Mexico, but this proved unprofitable. Traffic between Panama and San Francisco was carried on in connection with the Pacific Mail Steamship Company.

In that year a contract was entered into with the Pacific Mail Steamship Company for interchange of business between Panama and San Francisco, and intermediate points in Central America and Mexico. This contract remained in force until 1876.

In the latter year this company terminated the contract and established its own Pacific line between Panama and San Francisco, maintaining it until February, 1878.

The result of operation of this Pacific line by the railroad company was very unsatisfactory and disadvantageous to it. It was found impossible to secure any other or more regular reliable cocarrier than the Pacific Mail Company.

This led to the making, in 1878, of an exclusive contract with the Pacific Mail; a contract which continued until February, 1893. At that time this company demanded a more favorable division of rates, and the Pacific Mail refusing to accede thereto, the railroad company attempted to terminate the contract by declaring it at an end. The Pacific Mail insisted, however, that certain prior contracts with the railroad company entitled it to a continuance of the agreement so far as concerned the traffic to and from Central American and Mexican ports, and brought suit in the supreme court of the State of New York to establish its contention. The court adjudged the contract in force and enjoined the railroad company from disregarding it, either by establishing its own line or by making other connections in contravention of it.

During the period in which the rights of the railroad company and the Pacific Mail, in respect of Central American and Mexican traffic, were thus in litigation, it became necessary to deal with the traffic between Panama and United States ports on the Pacific not affected by this controversy.

At that time the merchants of the Pacific coast States considered that the transcontinental railroads were abusing their powers and exacting unreasonable rates; bitter hostilities existed between the transcontinental railroads and the shippers, and the Panama Railroad Company was besought by the merchants and shippers to cooperate with them in the establishment of a line of steamers running between San Francisco and Panama, to furnish competitive outlet for their traffic. The railroad company heartily supported the Pacific coast. Public meetings were held in California, and great interest was manifested in the press and commercial community respecting this measure, which resulted in the organization, by the merchants of San Francisco and the Pacific coast, of a corporation entitled the North American Navigation Company, with a cash capital of \$200,000, to itself operate a line of steamers in connection with the Panama Railroad Company, under an exclusive through-billing agreement. To encourage this competition with the transcontinental railroads, and to foster its own business, the railroad company made an exceedingly favorable contract with the North American Navigation Company, exclusive and through billing, substantially of the same character as that now existing with the Pacific Mail.

The operations of the North American Navigation Company, however, were disastrous, and resulted in a bankruptcy of that company in May, 1884, with a total loss of the investment of the merchant stockholders, and an indebtedness by it to this company for material and supplies which has never been liquidated.

The financial loss inflicted upon the merchants of San Francisco in their desire to maintain an independent steamship line was very large, in addition to the capital invested, notwithstanding that there was not the slightest restriction placed upon the number of sailings their ships might make nor upon the quantity of cargo they might handle.

The result of this operation was equally unfortunate to the railroad company, whose losses can be noted from the financial statement which we will presently set forth.

Upon the failure of the North American Navigation Company and the abandonment of the competition by the Pacific coast merchants, the Panama Railroad Company was forced to take up any carry on the line with chartered vessels, but at a heavy loss, which it endured until December, 1895, largely from a public spirit and to support the merchants who had lost so heavily in their contest with the powerful transcontinental railroads. In December, 1895, an adjustment was reached with the Pacific Mail concerning the legal controversies which had been pending, and a new contract was made, substantially the same as the one now existing.

The term of this contract was five years, and it proved reasonably profitable to both parties.

At its expiration in 1900, a demand for what is called the "open-door policy" at Panama arose at the instance of two foreign lines who were already cocarriers with the company in other traffic. It was these lines which contended that by the concession from Colombia the company was bound to accord equal privileges to all responsible lines.

After prolonged consideration the Panama Railroad Company determined to give the "open-door" plan a trial, and it publicly announced the adoption of that policy. All lines (including the Pacific Mail) were accordingly invited to participate. The Pacific Mail declined to participate or make any contract upon that basis. As a result all relations between that company and this corporation were again severed.

The two foreign companies (at whose urgent demand the policy had been adopted) having only vessels of foreign registry, and refusing to charter or construct those of American registry, were unable to extend their service, as far as traffic with this company was concerned, beyond Mexican ports. This company made every possible effort, but without success, to secure other lines of American registry to take up and operate a line between San Francisco and Panama. Efforts also to arouse interest in the Pacific coast merchants to again establish such a line met with no satisfactory response, although this company offered to give them exclusive control of business to and from San Francisco and United States ports beyond, and equal participation as well in the Central American and Mexican business, which, by the compromise agreement with the Pacific Mail, this company had again become possessed of.

Again this company was compelled in self-defense to open and operate a line of its own between San Francisco and Panama in connection with its Atlantic line and Isthmian railroad. As in every previous instance, the operation of that line proved a heavy loss to this company.

At this juncture the situation of the Panama Railroad Company was most unfortunate. The San Francisco-Panama line was operating at a heavy loss, as were also the said two foreign lines running to Central America and Mexico. The service of these foreign lines was irregular and inefficient, and perhaps unavoidably so; the patronage of the Panama route was being diverted to other channels, and the good will and business of the Panama route was being ruined.

Mr. TOWNSEND. How do you figure out that you could operate a line of steamships on the Atlantic successfully, but can not do it on the other side?

Mr. DRAKE. Because of the long haul and because there is not business enough on the route for more than one steamship line. That is the crux of the situation. There is just enough business for one well-managed steamship line, provided it has both the foreign and domestic business in connection with the Panama Railroad Company, on the Pacific. If that door is opened and open competition results, the consequence is inevitable.

Mr. SHACKLEFORD. Why could you not, by making a proper rate, capture of that traffic that I spoke of that goes through the Straits of Magellan?

Mr. DRAKE. That is comparatively small and does not amount to enough to make any appreciable difference. Almost all of that is moved by the Southern Pacific and our line. Considerable of it is brought around to New York by sailing vessels that have arrived at San Francisco with coal and are looking for a cargo back, and there

is one large shipper there who habitually charters vessels, when he can do so advantageously, and loads the vessel there for New York.

Mr. SHACKLEFORD. I speak of that which comes by the Hamburg line around by the Straits of Magellen.

Mr. DRAKE. That amount is very small, and it would not make an appreciable difference.

Mr. MANN. Do you explain in your paper there why you could not operate a steamship line profitably on the Pacific coast, with the Panama Railroad, while the Pacific Mail Company could continue to operate without the railroad?

Mr. DRAKE. No, sir; I could not explain that. I could not justify it. I think I make it plain here that losses would inevitably result. The distance is 3,500 miles from San Francisco to Panama. The Pacific Mail has established stations all along that littoral, and can handle the business to the disadvantage of any competing line. We would have to go to the expense of developing just such agencies, and the result of competition there must be disastrous. The operation of a steamship line is different from the operation of a railroad. The competition is unlimited, and the result is, almost inevitably, the survival of the fittest; and unfortunately the foreign lines at this time operated are the fittest to survive.

Mr. MANN. Have the Pacific Mail Steamship Company refused to carry freight through your company?

Mr. DRAKE. I said they had.

Mr. MANN. I say at those periods, if they had refused to carry freight, and thereby run at a loss, how long do you think they would be able to continue that?

Mr. DRAKE. That I can not say.

Mr. MANN. Would that be controlled by the fact that they could afford to run the Pacific Mail at a loss in order to keep the freight rate up for the Southern Pacific and Union Pacific Railways?

Mr. DRAKE. I can imagine that if the connection with the railroad line were entirely severed that line would be run for the interport trade, in order to operate a certain tonnage which they have now which is not fit now for anything else.

Mr. MANN. You say that it would be in competition with foreign lines?

Mr. DRAKE. I think so.

Mr. MANN. Then the only line which is now operated so as to carry freight to San Francisco by means of the Panama Railroad Company could be continued in order to collect the higher freight rates that would result to the transcontinental roads?

Mr. DRAKE. I think I make that plain. There is nothing they would like better. You understand, they did not go into that contract with us out of regard for us. They went into it so as to operate that line on the coast and secure and continue the business they had with foreign points, via the Isthmus. (Reading:)

Experience had proven that there was not business enough for more than one line and that no steamship company could afford to operate with American vessels on the long route between San Francisco and Panama unless having an exclusive agreement in the carrying of cargo to and from both domestic and foreign ports in that territory in connection with the Isthmus route.

So ruinous and so incontrovertible were these conditions, that the two foreign lines who had urged the "open-door" policy were forced to recognize that they themselves could not profitably continue operations under that policy. Accord-

ingly this company, now firmly convinced of the wisdom of its previous policy, renewed negotiations with the Pacific Mail Steamship Company, and concluded with it the contract of June, 1902. The said two foreign companies withdrew from the Central American and Mexican traffic, which had proved so unprofitable to them and so disappointing to this company.

The contract with the Pacific Mail has continued in satisfactory operation to the present time. Under it the sailings have been regular, the service reliable, and the good will of the Panama route has become reestablished. Under its provisions the Panama Railroad Company secures more than 50 per cent of the through rates and the operations have proved profitable.

The results of these successive policies of operating under an exclusive contract with the Pacific Mail or without it are conclusively reflected by the net earnings. These results are as follows and speak for themselves:

	Year.	Loos.	Profit.
When operating with the Pacific Mail	1891		\$323,800
Do	1892		182,816
No contract with Pacific Mail; period of North American Navigation Co. operation	1898	\$233,099	
North American Navigation Co. abandoned service; continued by Panama Railroad; no contract with Pacific Mail	1894	80,776	
Panama Railroad operating line; no contract with Pacific Mail	1895		62,943
Contract with Pacific Mail	1896		545,684
Do	1897		408,873
Do	1898		206,746
Do	1899		296,251
Do	1900		446,764
South Pacific carriers (two foreign lines) operating north of Panama; no contract with Pacific Mail; earnings reduced	1901		259,590
Same conditions as 1901 for first six months and thereafter; contract with Pacific Mail	1902		295,384
Contract with Pacific Mail	1903		401,086
First six months; contract with Pacific Mail (six months only)	1904		811,000

Our business between Panama and San Francisco and intermediate points is 53 per cent of the total business of the Panama Railroad Company, on the basis of last year's traffic, and it is this (the bulk of the company's business) that is involved in the contract with the Pacific Mail, and from which fully 50 per cent of the annual net profits of the company are derived.

The transcontinental railroads naturally seek to monopolize the business of the Pacific coast, and the history of their dealings with this subject is notorious. Unless the Isthmus route is maintained as a competitor to them, the whole Pacific coast again comes under the thralldom of the transcontinental railroads.

Mr. SHACKLEFORD. Let me interrupt you there. Does not the Pacific Mail belong to some of the transcontinental lines?

Mr. DRAKE. It belongs to the Union Pacific through its ownership of the Southern Pacific. They control it. They own a little more than a majority of the stock.

Mr. SHACKLEFORD. It is under their control?

Mr. DRAKE. Yes, sir [reading].

The only escape of the Pacific States from their monopoly lies in the maintenance of a competitive route via the Isthmus.

To afford the Pacific coast this outlet, the Panama Railroad Company maintains rates from 20 to 30 per cent less than the transcontinental railroads, and also competes with the American-Hawaiian Steamship Company, which operates via Magellan.

It will readily be seen that nothing would afford the transcontinental railroads greater satisfaction than to witness this company forced out of competition with them, through the abrogation of the Pacific Mail contract, by which a regular, efficient, and satisfactory service with American vessels is maintained between San Francisco and Panama and intermediate points, and thus be compelled to depend upon uncertain operation of new and so-called "independent lines," lacking in experience, suitable vessels, capital, and business.

If, therefore, the company terminates the Pacific Mail contract, it must be prepared to resume operations itself, or to accord exclusive through billing privileges to some other single line, since on that basis only can any line be

maintained under existing conditions of traffic. To withdraw from the business is to surrender the Pacific coast to the tender mercies of the transcontinental railroads, and to render an inefficient and uncertain service is likewise to play into their hands.

The consequence of either policy would be a serious loss to the railroad company, independent of its effect on the public.

There is not one jot of evidence that any individual or group of individuals in any part of the United States is prepared to establish a steamship line to replace the Pacific Mail service between San Francisco and Panama, and there is not a scintilla of proof that there is at present business enough for more than one line. There would be nothing gained, so far as this company is concerned, in the mere substitution of one line for another; and experience has demonstrated that there is not yet enough business to maintain more than one line.

Bearing on the difficulty of securing the establishment of any new line, we need hardly remind you that the San Francisco-Panama line, as far as through traffic with the Panama Railroad is concerned, can only be maintained by vessels of American registry, because of the regulations of the United States Government regarding the carriage of cargo between United States ports. Sufficient business can not be secured with which to profitably maintain a steamship line catering exclusively to this long-haul San Francisco traffic; and if a line is deprived (by competition with vessels of foreign registry) of the profit on the short-haul Central American and Mexican business, the consequent loss will sooner or later force it to withdraw altogether. In other words, our experience for the past thirty years proves that there is not sufficient business to sustain a long-haul service from San Francisco unless the profitable short-haul business with Central America and Mexico can also be secured by the same line.

Another equally practical phase of the subject invites consideration, namely: The directors of the company have authorized the construction of two, if not three, additional steamers for the Atlantic service, and bids are about to be invited. The Pacific coast business in 1903 was 41 per cent of the total tonnage of the company's Atlantic steamship line, and the construction of these steamers is justified by that fact. But if the Pacific Mail contract is now terminated, and the Pacific coast business lost or demoralized, there is no necessity for the construction at this time of additional vessels. Moreover, in that event the company's ability to pay for them would be seriously jeopardized by the consequent loss of business.

It may be well to note that after years of effort arrangements have been established, not only with the Pacific Mail, but with 10 connecting steamship lines on the Atlantic Ocean, as well as with connecting steamship lines on the Pacific Ocean, by which uniform classifications of cargo, and relatively uniform bills of lading, have been adopted.

In view, therefore, of the fact, which has become demonstrated, that there is not at this time enough business for more than one Pacific line; that in order to secure a profitable and reliable connection, exclusive through billing arrangements must be made with a single Pacific Line; the losses which have invariably transpired when the company has operated its own Pacific line the failure of independent lines to maintain the service; the profitableness to this company of the present contract upon which more than half of the net earnings and dividends of the company depend; that if the Pacific Mail contract be now terminated no other equally satisfactory connection is practicable, and that if such contract be now terminated the company will be compelled either to itself maintain the line at a loss, as heretofore, or else abandon the line and thus deprive the Pacific coast of competition with the transcontinental lines; the board of directors of the company consider that it is not to the interest of the corporation to terminate the existing contract with the Pacific Mail Steamship Company before it is prepared to itself operate the line or is assured equally profitable, efficient, and satisfactory traffic connections.

We now turn to the second aspect of the subject—the legality of the contract.

We consider the contract entirely legal and enforceable. The decision of the supreme court at Bogota did not at all concern the validity of the contract between this company and the Pacific Mail; it concerned only the interpretation of the concession granted by Colombia to the Panama Railroad Company. It was contended that the railroad company was bound by the terms of that concession to grant through-billing provisions equally to all cocarriers. The decision did not deal with this point directly, and only held that rates over the railroad (but not over the steamship line) must be the same to all persons, whether they were proportions of through rates or were fixed by the company's regular

tariff. We feel justified, however, in referring to the state of affairs in Colombia at the time the decision was rendered and to the bitter hostility then manifested by the authorities and people of that nation toward the United States and the canal and railroad companies. This company paid no regard to the decision, which it considered unsound and unwarranted. The Colombian courts nor even the complainants never sought to enforce it or carry it out; but, at any rate, it related to the interpretation of the concession, and did not concern the validity of the Pacific Mail contract.

The present Pacific Mail contract, with similar ones made by the company, have been in operation for two generations, and no one has ever contested their validity in any court of law or equity, even under the most intense competition of the transcontinental lines, and even under the disappointment of other carriers demanding similar privileges from us. On the contrary, the supreme court of New York, in the case mentioned in this letter, recognized the validity of the contract by decreeing that the company must continue it, and by enjoining the company against violating it.

But it may aid you if we still further enlarge upon this point:

The Panama Railroad Company was created by special charter granted by the legislature of the State of New York, April 7, 1849, with plenary powers for the construction and operation of a railroad across the Isthmus of Panama, and of steamship lines in connection therewith.

The company accordingly established, and has maintained, a continuous single route between New York and San Francisco and intermediate points, made up by the Atlantic line, between New York and Colon; the railroad line, between Colon and Panama; and the Pacific line, between Panama and San Francisco. It is a single line, performing a continuous service between the eastern and western coasts of the United States. No part of this line is parallel with the other; no part is competitive with the other. No one can question the right of the company to itself own and operate such line; and we are not aware of any principle of law or public policy which prohibits the railroad company from carrying out by contract with others that which it may lawfully do itself. Nor is there any principle of public policy which prohibits, either within or without the United States, two transportation lines, neither parallel nor competing, which connect and form a continuous line, from entering into a contract for the interchange of traffic and division of rates, or making such contract exclusive as to each other.

Mr. MANN. Do you know of any such contract in this country on any railroad? Have you ever heard of any such contract?

Mr. DRAKE. No, sir; I do not recall one for the moment. That is what I claim for the Panama business—that it is unique; that it is different from any other business in the world.

Mr. MANN. That is the reason I asked you if you knew of any such contract in the United States.

Mr. DRAKE (reading). "Such agreements are common in the United States, as in other countries." I do not recall any, as I say, sir.

Mr. MANN. There are none such in existence.

Mr. DRAKE (reading).

Such agreements are common in the United States, as in other countries. It has been even held that under the Interstate-commerce law a company which has made a special agreement for through billing and joint rates with a connecting company can not be compelled to make a similar agreement with other connecting carriers and does not violate the law by making such an exclusive agreement.

If there be any principle of public policy involved, it would seem rather that it should be invoked to support the Panama route and the existing contracts, for the Panama Railroad furnished to an important section of the United States the only protection which competition can give it against transcontinental railroads. The Panama Railroad competes with the strongest monopoly in the transportation world. Should such protection and competition be withdrawn, or be impaired by spasmodic, unreliable, uncertain service, no greater misfortune could occur to the Pacific coast.

That covers the expression of my opinion on those three topics. Now, in connection with this subject, I would like to lay before you

the formal notice of termination of the contract with the Pacific Mail Steamship Company, which was served on that company on January 12-13, 1904.

The document referred to is here inserted in the record as follows:

JANUARY 12, 1905.

The PACIFIC MAIL STEAMSHIP COMPANY, *New York*.

GENTLEMEN: Whereas by article 21 of the traffic agreement entered into between the Panama Railroad Company and the Pacific Mail Steamship Company, dated June 11, 1902, the duration of said traffic agreement is made subject to the provisions of a contemporaneous agreement between said parties thereto of even date therewith; and

Whereas by article 4 of said contemporaneous agreement known as "the supplemental contract," it is provided and agreed "that if at any time during the continuance of said traffic agreement a majority of the shares of the railroad company or its railroad property shall be purchased or acquired by the United States of America, or by any person or persons representing it, or acting in its behalf, then either party hereto may give notice in writing to the other of its intention to terminate said traffic agreement, and at the expiration of six months from the giving of such notice the said traffic agreement, and the previous articles of this agreement shall terminate, come to an end, and be utterly null and void thenceforth, anything in said traffic agreement or herein contained to the contrary notwithstanding;" and

Whereas a majority of the shares of the said Panama Railroad Company has been purchased by the United States of America, and

Whereas at a meeting of the board of directors of the Panama Railroad Company duly called and held on this 12th day of January, 1905, the notice and action herein contained were duly authorized to be given and taken:

Now, therefore, the Panama Railroad Company hereby gives notice to you, the Pacific Mail Steamship Company, of its intention to terminate said traffic agreement, and that at the expiration of six months from the giving of this notice, the said traffic agreement, and articles first, second and third of said supplemental agreement will terminate, come to an end, and be utterly null and void, anything in either of said agreements contained to the contrary notwithstanding.

Dated New York, January 12, 1905.

PANAMA RAILROAD COMPANY,
By J. EDWARD SIMMONS, *President*.
E. A. DRAKE, *Secretary*.

Attest:

Mr. MANN. If the Pacific coast trade will support but one steamship line and the Pacific Mail Line has practical control of the trade, or at least the best chance to control the trade, why is it that the Pacific Mail Line is so afraid of competition that it refuses to do business with you unless it has an exclusive contract?

Mr. DRAKE. Because that business is conducted on such a narrow margin of profit. There is so little earning.

Mr. MANN. Why could they not still keep everybody else out if there was only one line there? What are they afraid of, tramp steamers?

Mr. DRAKE. No, sir; regular lines connecting at Panama with our load.

Mr. MANN. Nobody could anticipate what tramp steamers might do.

Mr. DRAKE. They are afraid of what might be possible if the door were thrown open. If the door were opened to another line, the business would be divided and there would be a loss to both of them.

Mr. MANN. And then the other line would not continue in business, would it?

Mr. DRAKE. That is exactly the contingency that I have suggested.

Mr. MANN. What makes you think that another line would start

in business when they knew in advance that there was only business enough for one line?

Mr. DRAKE. I know there are several deluded parties who are heard from frequently on that subject who have stated that they would enter the coastwise and foreign business if they could secure connection at Panama. I do not believe it to be true. Even if they entered into competition, as they would be obliged to, with the Pacific Mail Steamship Company in foreign traffic alone on the coast and secured the coastwise traffic to the exclusion of the Pacific Mail Steamship Company it would result in loss to both, and it would result in the ultimate withdrawal of the new line and the consolidation of the Pacific Mail's control. We claim that we have secured the full benefit of connection with the Pacific Mail Steamship Company.

Mr. MANN. What would be the probable annual expense of operating such a line of steamers as is operated by the Pacific Mail Company now?

Mr. DRAKE. I can not tell you, because eight or ten vessels are now operated by the Pacific Mail Steamship Company, and the result would be very materially affected if high-grade, modern-built ships were employed that could be operated regularly and speedily, and by reason of their capacity, at a low cost.

Mr. MANN. We believe that you are thoroughly sincere about this matter, Mr. Drake, and that you believe that the Panama Railroad Company is not controlled by the transcontinental railroads. I want to ask you this question: In your judgment, is the refusal of the Pacific Mail Steamship Line to deal with you when they have not an exclusive contract actuated by their fear of ocean competition or fear of competition with the transcontinental railroads?

Mr. DRAKE. I think it is actuated entirely by their thorough familiarity with the fact that if they do not have an exclusive contract with us they can not maintain the line except at a loss. They lost \$375,000 as a result of competition in the first year after severance of their connection with us.

Mr. MANN. Do you think that refusal is actuated by fear or by the fact that the control of the steamship line is held by the Southern Pacific Railroad and the Union Pacific Railroad?

Mr. DRAKE. If it is really because of such control, I have no knowledge of it; nor do I believe it to be for other reason than a determination not to repeat their previous experiences.

Mr. MANN. Do you think that fear is increased at all by that fact?

Mr. DRAKE. No, sir.

Mr. MANN. Do you think that the fact that the steamship line is controlled by the transcontinental railroads has nothing to do with the refusal of the Pacific Mail Line to handle freight in connection with you unless they have an exclusive contract?

Mr. DRAKE. I think I can properly answer that question by repeating the utterances made by the officials of that company to the effect that they will not operate that line at an assured loss; that they will not lose any more money by operating that line in competition with other lines.

Mr. MANN. Their own statements and conduct would indicate that they were not anxious to operate it unless they had an exclusive contract.

Mr. DRAKE. They absolutely decline it, and give what appears to us to be a good reason. They severed the connection. They have discontinued it in the past.

Mr. MANN. Do you have rate sheets?

Mr. DRAKE. Yes, sir; we have the traffic manager here.

Mr. MANN. Are those rate sheets published?

Mr. DRAKE. Yes, sir; they are published.

Mr. MANN. In what form?

Mr. DRAKE. I am familiar with them, of course. They are published in the form of printed tariffs covering all the sections of our route.

Mr. MANN. Can we have some of those?

Mr. DRAKE. Yes, sir; every tariff we issue can be duplicated.

Mr. MANN. And you have classifications?

Mr. DRAKE. Yes, sir; I stated that we fortunately had arrived at an understanding with all of our connecting lines and have established uniform classifications, respectively, for points south of Panama and for points north of Panama. That is a large step forward in commerce, whether we continue in it or not.

Mr. MANN. Will you furnish us copies of those?

Mr. DRAKE. Yes, sir.

Mr. MANN. I wish you would.

Mr. DRAKE. Yes, sir.

Mr. STEVENS. Do you understand that there will be much increase of traffic from the Pacific coast to the Isthmus by reason of the construction of the canal?

Mr. DRAKE. It is anticipated that there will be some increase, but not in the shape of products.

Mr. STEVENS. It will be mostly in lumber, and things like that, needed for the construction of the canal?

Mr. DRAKE. Yes, sir.

Mr. STEVENS. Is there not always a constant increase of traffic from the Mexican ports up and down the Pacific coast?

Mr. DRAKE. No, sir; there is a slight increase, but the ports are few and the coast is inaccessible. I might account for that by saying that the entire Pacific coast littoral now supports but 5 million people, and while it may be capable of supporting 100 million people its development is very slow.

Mr. STEVENS. Are there not now two or three lines of railroads in Mexico which are now seeking the Mexican Pacific ports?

Mr. DRAKE. It is quite true that there is one, the Tehuantepec road, which is creating ports?

Mr. STEVENS. Yes; then there is the Mexican Central and the Mexican National, and that makes three lines?

Mr. DRAKE. Yes, sir.

Mr. STEVENS. Will that not make considerable increase of traffic to the Mexican ports?

Mr. DRAKE. It should; yes, sir; that is for the railroads.

Mr. STEVENS. Do not the railroads bring traffic to ports that seek water transportation?

Mr. DRAKE. It is a general fact that the increase of facilities results in an increase of business.

Mr. STEVENS. It always works that way.

Mr. DRAKE. Yes, sir; but there is a difference in this case. The coast is a very inaccessible one, and the handling of traffic is done through ports that are accessible. Traffic will travel up and down the interior to get to ports where it can be handled most readily.

Mr. STEVENS. Is it not true that there will be an increase of traffic that must seek the water from Mexican ports?

Mr. DRAKE. Yes, sir; I think so, in years.

Mr. STEVENS. Now, from the increased traffic from these various causes, will there not be some steamship line or lines operated between the Pacific ports and the Isthmus?

Mr. DRAKE. I should think so, naturally. But I would like to say to you that I think that will not come about during the period of the canal construction. I do not think it will result during the next five or six years.

Mr. STEVENS. You think, then, that if the Pacific Mail ceased to operate its steamers there would be no steamship line there?

Mr. DRAKE. I do not think that. There are two foreign lines that are operating in connection with us to and from south of Panama, and they have again offered to extend their service.

Mr. STEVENS. There will be some steamship carriers?

Mr. DRAKE. Yes, sir. They would simply extend their itinerary up the coast, whether it was profitable or not.

Mr. STEVENS. If there be some steamship connection with the Pacific ports and Panama, so that it is possible to have some through bill of lading or coastwise business, does not that—

Mr. DRAKE. The foreign lines could not through-bill in the "coastwise" traffic, but could do so in traffic to and from Mexican and Central American points, as they are now doing south of Panama in connection with us.

Mr. STEVENS. Well, would there not be connections which would give a through bill of lading to American lines for coastwise business?

Mr. DRAKE. I do not think there would be any American line that would enter that traffic alone, because the rates obtainable would be unremunerative. That was the reason why the operation of just such a line was disastrous for us and to North American Navigation Company, and there is no reason for any company to expect a profit from the rate that would be obtainable between San Francisco to Panama.

Mr. STEVENS. That is what I was trying to get at. Has not the course of business somewhat changed by reason of the construction of the canal, and by reason of the construction of these additional railroad lines in Mexico?

Mr. DRAKE. Not yet. None of them of have been realized. It is all prospective.

Mr. STEVENS. Yes; but the canal will be constructed, and those railroads are being constructed, and large amounts of material must be moved.

Mr. DRAKE. But the railroads have been in process of construction for years. They are approaching completion. There are serious difficulties in the way of actual completion of those roads, and none of those difficulties have been effectually reduced.

Mr. ESCH. The Tehauntepec road is national?

Mr. DRAKE. The Panama Railroad Company need have no apprehension of that competition except and unless the Panama route be

throttled and closed, because the Tehuantepec road is a line with heavy grades and it is 173 miles long. Prominent foreign contractors have a contract with the Mexican Government to complete the terminals, and they have had it for years. Twice within the last ten years the railroad has been reironed with light rails, and they have attempted occasionally to transport some through cargo, and we have heard of it, and that is the last that we have heard of it. It is a national enterprise. I am not trying to belittle it. It could only be stimulated into life in case the Panama Railroad was throttled; that is, the railroad might be devoted entirely to the construction of the canal. Let me express one thought here. That railroad was laid out and built by American brains, skill, and capital (I see here one of the gentlemen who was connected with that period), and it has been operated for fifty years, and this Government has assumed a serious obligation to the Pacific littoral to preserve the channel which has developed commerce from 50,000 tons in the beginning to 400,000 tons to-day. The canal itself is to be built to develop and provide for increased traffic, and the chief danger to existing commercial and maritime interests using the Isthmus route is that the present active operation of that route will be subordinated to the necessities of canal construction. There is no necessity for that. Under the French canal construction period the commercial business of the company was conducted successfully, in addition to the work for the canal company, which was done under a more favorable contract for the railroad than the railroad now has with the Canal Commission.

Mr. STEVENS. The business of constructing the canal was not very profitable during that time?

Mr. DRAKE. That is why this Government came into possession of it.

Mr. STEVENS. Is the Tehuantepec railroad to be in connection with Panama?

Mr. DRAKE. I do not think it is. It has two terminals on the Gulf, one at Salina Cruz, where they have sunk great blocks of stone to create a breakwater and to make a lagoon in which vessels may anchor, but by a violent storm lately the foundations of their works have been utterly destroyed. At Coatzacoalcas, on the Gulf side, they are going 18 miles up the river to establish a large interior terminal, and they expect to complete the line. But the terms of the contract which the contractors have with the Government entail the payment to the Mexican Government of 5 per cent on the gross receipts, and the period of the payment on gross receipts has disappeared so far that the lack of profit is determined in advance.

Mr. ESCH. This notice was given to the Pacific Mail Company on the 12th of July?

Mr. DRAKE. Yes, sir.

Mr. ESCH. And is in force on the 12th of July of this year?

Mr. DRAKE. Yes, sir.

Mr. ESCH. In the report which you have filed here as to the fees of the directors of the Panama Railroad Company I notice an itemized account of Mr. Grunsky's fees. Commissioner Grunsky filed with the chairman of the committee last Saturday a letter, of which I will read the first paragraph. The letter is dated February 18, 1905, and is written, calling attention to another letter which is addressed to you

as secretary of the board of directors, under date of December 13, 1904. The first paragraph of that letter is as follows:

Inclosed I hand you, unopened, an envelope which was handed to me at the close of the first and only directors' meeting, July 26, which I have attended. It contains, I suppose, the attendance fee to which the directors are entitled under the company's by-laws. I did not insist upon declining this fee at the time it was handed me in order to avoid possible embarrassment of my associates, and because I desired to read again the President's letter which makes our services on the board of directors a part of our official duties, for which we are otherwise compensated. I can not construe the attendance fee other than compensation, and therefore must decline to accept any such fee for attendance at meetings, etc.

Did you receive such a letter?

Mr. DRAKE. Yes, sir.

Mr. ESCH. Did Mr. Grunsky return the first payment of \$25?

Mr. DRAKE. He did.

Mr. ESCH. Your account seems to indicate that that was the payment for the meeting of July 26 last?

Mr. DRAKE. Yes, sir.

Mr. ESCH. Your account shows that he received in all payments for 10 meetings of the board of directors, making a total of \$250?

Mr. DRAKE. Yes, sir.

Mr. ESCH. Were all payments subsequent to July 26 returned by him?

Mr. DRAKE. No, sir.

Mr. ESCH. Did he receive and has he retained the payment of \$25 made July 26?

Mr. DRAKE. Yes, sir. Let me say in explanation of that that the envelope which he returned was retained by the treasurer and subsequently handed back to him.

Mr. ESCH. And retained by him?

Mr. DRAKE. Yes, sir.

Mr. ESCH. Has he received and retained the nine subsequent payments?

Mr. DRAKE. Yes, sir.

Mr. ESCH. Including the payment for the meeting of February 18, last?

Mr. DRAKE. He has retained them. There is an itemized statement of each director there.

Mr. ESCH. Yes.

Mr. TOWNSEND. Now, you spoke of the fact that the directors had received pay. I want to ask you if Frank Hecker ever received any money as a director of the Panama Railroad Company?

Mr. DRAKE. No, sir; he never attended a meeting.

Mr. TOWNSEND. Did General Davis?

Mr. DRAKE. No, sir. He never attended a meeting. He received notice of his election while he was on the Isthmus.

Mr. SHACKLEFORD. Neither of them ever attended any meeting?

Mr. DRAKE. No, sir.

Mr. WANGER. Has he been in the United States since he became a director?

Mr. DRAKE. Yes, sir.

Mr. MANN. Who was elected to succeed Mr. Hecker on the board?

Mr. DRAKE. Nobody. There is a vacancy.

Mr. MANN. Have you produced here the minutes of these meetings?

Mr. DRAKE. Yes, sir. I produce the original minute books of the board of directors and of the executive committee for several years back, and present them for such examination as may be desired.

Mr. STEVENS. Are they a part of the record?

Mr. TOWNSEND. They are here to be examined, and any part of them that you desire will be put in the record.

Mr. STEVENS. I desire to examine them.

Mr. MANN. I desire to examine them.

Mr. SHACKLEFORD. Where do you get the coal that you have been buying for the Panama Railroad Company?

Mr. DRAKE. We buy it in New York.

Mr. SHACKLEFORD. Where do you buy it?

Mr. DRAKE. From Castner, Curran & Bullitt.

Mr. SHACKLEFORD. Has the Panama Railroad Company been supplying the Commission with the coal that they have used on the Isthmus?

Mr. DRAKE. Yes, sir.

Mr. SHACKLEFORD. What sort of an arrangement was made with them?

Mr. DRAKE. The arrangement with them at first was that they were to be supplied at the same rate at which we had theretofore sold to the United States Government. That has been a declining price, until now we are supplying coal at \$5 per ton at Colon and at \$6 per ton along the line of road.

Mr. SHACKLEFORD. Along the line of the road?

Mr. DRAKE. Yes, sir. That price little more than covers the cost.

Mr. SHACKLEFORD. Has the Commission at any time advertised for bids for furnishing coal?

Mr. DRAKE. No, sir; not that I know of.

Mr. SHACKLEFORD. It has all been furnished by the Panama Railroad without competition?

Mr. DRAKE. Yes, sir. We received a communication from the Commission asking us to furnish them with such coal on the Isthmus as they required.

Mr. SHACKLEFORD. Who is president of that company from which you buy your coal?

Mr. DRAKE. I do not know that it has a president. It is a business concern, or firm.

Mr. SHACKLEFORD. Are any of the Commissioners stockholders in it?

Mr. DRAKE. No, sir; not that I know of.

Mr. SHACKLEFORD. Are any of the directors of the Panama Railroad directors in it?

Mr. DRAKE. No, sir; not that I know of. No, sir; I can safely say that they are not.

Mr. SHACKLEFORD. Was there up for consideration during the year 1903 or 1904 any proposition under the contract with the Pacific Mail Steamship Company?

Mr. DRAKE. No, sir; the contract was running.

Mr. SHACKLEFORD. I know, but was there a proposition to amend or modify that contract, which was pending before the board of directors of the Panama Railroad Company?

Mr. DRAKE. No, sir.

Mr. SHACKLEFORD. Prior to last October?

Mr. DRAKE. Not that I recollect. I would recall it immediately if there had been.

Mr. SHACKLEFORD. Who is the Brown Hoisting Machinery Company?

Mr. DRAKE. I do not know them at all.

Mr. SHACKLEFORD. Have you had any connection or any business affairs with them?

Mr. DRAKE. No, sir.

Mr. CROMWELL. That is a large Cleveland firm, is it not?

Mr. DRAKE. I do not know them at all.

Mr. SHACKLEFORD. Where do you get the coal that you purchase; where is it delivered to you?

Mr. DRAKE. At Norfolk.

Mr. SHACKLEFORD. Do you know where it comes from?

Mr. DRAKE. It comes from along the Norfolk and Western Railroad. It comes from the mines of Castner, Curran & Bullitt—the Pocahontas Coal Co.

Mr. SHACKLEFORD. That is all I have to ask.

Mr. WANGER. Do I understand you that you think that the Panama Railroad Company, through its steamship line from New York to Colon and its agreement with the Pacific Mail Steamship Company, secures the largest possible revenues for its operation?

Mr. DRAKE. Yes, sir; I desire to so state. We have an agent in San Francisco who is engaged for the purpose of "keeping tab," I may say, upon the operations there, and to see that the market is canvassed, and that all freight that can be attracted our way is attracted and carried our way. We do the same thing at this end, and the evidence is that our ships are going out fully loaded with a San Francisco cargo, and we had a few days ago, at Panama, to deliver to the Pacific Mail Steamship Company an accumulation of 4,000 tons of San Francisco cargo bound north, and the ships are coming down full.

Mr. WANGER. Do you think that the volume of the freight or the number of passengers might have been materially increased if it had not been for that contract with the Pacific Mail Steamship Company?

Mr. DRAKE. That it could have been increased?

Mr. WANGER. Yes; materially.

Mr. DRAKE. I can not say as to that, but I do know under the contract traffic has not been developed to its possibilities. The Pacific Mail Steamship Company have done exactly what we have done in regard to constructing ships for the route. Expecting a continuance of this contract, and believing and hoping that the only American line running to the Isthmus would be fostered and not discriminated against, the Pacific Mail Company, as I learned through interviews with their officials, had prepared specifications and invited bids for the construction of three large vessels to place on their line, to run in connection with the vessels we were expecting to build, for which we had plans and specifications prepared upon which to invite bids. All of that work for both companies has been stopped. There is one thing I would say, and that is if both lines were encouraged to go ahead with their construction the business can be developed very rapidly and be made very much more profitable, so that by the time the canal is completed there will be a good strong American line ready to run through the canal the first day it is opened. There are sev-

eral lines seeking to share the business of the company's line to Colon by making that point a port-of-call, in connection with our railroad, they to be allowed a differential in rates because of delayed or slow service. We have refused the connection, as it would render the situation ruinous for us by reason of cheap competition. If such connection be allowed there is nothing to prevent Pacific Mail from restoring its line on the Atlantic to connect with their Pacific service, and thus secure control of our coastwise business. We have had instances of the effect of such competition as I refer to above in contracts that we have placed recently for carrying canal materials to the Isthmus for the Commission.

Mr. WANGER. Your judgment, then, is strongly against abrogating the contract with the Pacific Mail Steamship Company?

Mr. DRAKE. I am strongly against doing so, unless another or other lines can be found to provide as good or better connection for our railroad.

Mr. STEVENS. You think those ships will not be built except under the assurance of an exclusive contract?

Mr. DRAKE. It would be unwise for them to build them for that service, which requires special type of vessel, as we do. Our vessels are adapted to long voyages for passengers and cargoes.

Mr. TOWNSEND. I want you to look at this paper and see if that is a correct statement of the matters therein set forth (handing witness paper)?

Mr. DRAKE. Yes, sir; that is a correct statement of the fees received by the directors and members of the executive committee.

Mr. TOWNSEND. You showed me this letter, and I do not know whether that has been marked or not (handing witness another paper).

Mr. DRAKE. That is a correct copy.

Mr. TOWNSEND. That is a correct copy of the letter, is it?

Mr. DRAKE. It is a correct copy.

(The two papers above referred to are here copied in the record, as follows:)

Not furnished.

(Thereupon the committee took a recess until 2 o'clock.)

AFTERNOON SESSION.

WASHINGTON, D. C., *February 20, 1905.*

The committee met at 2 o'clock p. m., Hon. James R. Mann (acting chairman) in the chair.

STATEMENT OF MR. RICHARD L. WALKER.

Mr. SHACKLEFORD. What is your official connection with the Panama Railroad?

Mr. WALKER. I am traffic manager of the Panama Railroad and of the Panama Steamship Line.

Mr. SHACKLEFORD. In determining rates between New York and San Francisco, what was the basis used?

Mr. WALKER. The basis is the transcontinental lines freight tariff.

Mr. SHACKLEFORD. How did you attempt to have your rates compare with the transcontinental tariff?

Mr. WALKER. We try to get freight at 30 per cent less than the transcontinental rate for shipments in less than carloads, and 20 per cent less for shipments in carloads; and we make those rates apply to a zone about New York, as far as an absorption of 20 cents a hundred pounds, of the inland rate.

Mr. STEVENS. It would apply to all rates not exceeding 20 cents a hundred pounds?

Mr. WALKER. Yes, sir.

Mr. STEVENS. Into New York?

Mr. WALKER. Yes, sir; and for the rates exceeding 20 cents a hundred into New York we usually add the excess to the rate. If that does not bring us sufficient business, we disregard the tariff altogether, and make a special rate; cut it down to what will get the business. For instance, we used to get a good deal of the low class dry goods business from New York to San Francisco when there were no carload rates for that class between New York and San Francisco. Their rate, say, was \$1.50, and 30 per cent off made our rate \$1.05. It was a material saving, and the shipper could afford to pay the marine insurance from that. But the railroads finally put in a carload rate of \$1, and I offer 40 per cent off of that, but it is not attractive.

Mr. STEVENS. Why?

Mr. WALKER. Sixty cents is not low enough to get the business, because they have to pay the marine insurance on it; and I can get other freights—other classes of freights—to fill up our ships which will make a better net revenue for us than to cut that rate lower.

Mr. STEVENS. How have the rates over your line, for instance, from Hamburg to San Francisco compared with the rates made by the other line by the way of the Straits of Magellan from Hamburg to San Francisco?

Mr. WALKER. The Hamburg line makes rates in consultation with us to meet the competition via New Orleans more particularly than via Magellan, and the Isthmus route has never been able to get much business from Europe to San Francisco. Last year the total tonnage from Europe to San Francisco by the Hamburg line and the other seven lines running into the Isthmus was only 2,938 tons.

Mr. STEVENS. That is all those lines brought?

Mr. WALKER. Yes, sir.

Mr. STEVENS. Have you any idea how much went by the other route that I have spoken of?

Mr. WALKER. Via Magellan to San Francisco?

Mr. STEVENS. Yes.

Mr. WALKER. Very little. The line that runs from Hamburg via Magellan calls at all the ports up the coast and it is discharging and loading cargo all the time just like a stage coach, in and out all up the coast, and it does not carry very much through cargo either way.

Mr. STEVENS. The majority of the cargoes for the Pacific slope that have come from Europe have come by way of New Orleans.

Mr. WALKER. They come by way of New Orleans and Norfolk and Montreal and New York. The Northern Pacific and Canadian Pacific are very strong factors in the business from Europe for the Pacific coast. They are very strongly competitive. I was several years ago with the R. F. Downing Company, forwarding agents,

and we handled a great deal of that business, and actively fought that competition all the time.

Mr. STEVENS. Have the Canadian Pacific their own lines from Vancouver down?

Mr. WALKER. I do not know whether they have now or not. I do not think they have.

Mr. STEVENS. Is there any freight moved to the Pacific coast in the grain vessels—those vessels that come to the Pacific coast to be loaded with grain from the coast to Europe?

Mr. WALKER. What class of freight?

Mr. STEVENS. General merchandise.

Mr. WALKER. From Europe?

Mr. STEVENS. From Europe.

Mr. WALKER. To San Francisco?

Mr. STEVENS. Yes; and other Pacific coast ports.

Mr. WALKER. It never has appeared to me a material factor.

Mr. WANGER. Has not the tariff of the Pacific Mail Steamship Company from Panama to San Francisco been an obstacle in the way of securing freight from Hamburg and other European points by way of the Isthmus?

Mr. WALKER. No, sir. The authority to make the through rates is vested particularly in the initial carrier, and the Panama Railroad has insisted upon the lines from Europe to Colon making rates to compete with the rates put out by the lines connecting with the Southern Pacific at New Orleans; and three years ago they made a tariff by weight altogether in place of the former tariff by weight or measurement. We could not get any freight at all from Europe to San Francisco when the shipper did not know whether the steamship was going to charge by measurement or the weight of the goods, because he knew just what he was going to pay by weight by way of New Orleans. So the European lines, after considerable discussion, agreed to waive the question of measuring the goods, and to take them by weight. They have recently lowered the rates, after consultation with us, to see if they could not build up a business. This 3,000 tons that I speak of is a gain of 1,200 tons over the year before.

Mr. SHACKLEFORD. Has there been any commerce across the Isthmus to and from Gulf ports?

Mr. WALKER. During the last year the United Fruit Company have established a line from New Orleans to Colon, and have carried freight to the Isthmus for distribution up and down the coast. They can not carry the San Francisco business because they use foreign steamers altogether. They will not take homeward freight, freight to New Orleans. They leave Colon empty, and load with bananas, practically, at Port Limon to go to New Orleans.

Mr. SHACKLEFORD. Would there not be a trade, then, if they would engage in it?

Mr. WALKER. Yes; we tried to induce them to handle some coffee business, and they did take a little; but then they stated that they did not want to go generally into the business, because the quarantine at New Orleans might interfere with the banana traffic, and bananas have to be discharged promptly at New Orleans in order to be delivered in good condition.

Mr. SHACKLEFORD. Is there a business which can be built up between Gulf ports and the Panama Railroad?

MR. WALKER. That is what we are looking for, between the Panama Railroad and the Gulf ports, outward. That is a growing business. The United Fruit Company have been in it only about a year. Several years ago (I think it was in 1900 or 1901) we tried to find some line that would operate between New Orleans and the Isthmus. No one was ready to go into the business then. But last year a storm in Jamaica injured the crop, and the United Fruit Company found the banana steamers on their hands without much to do, and therefore they thought that they would run their steamers into Colon and make an arrangement with us to handle bananas there. We invited that competition with the business that was already there, and that was the inauguration of their line. They then finally decided that they would go in with us and make the same rates from New Orleans to all the Pacific ports—foreign ports—that we did so as to get the business from the Middle West.

MR. SHACKLEFORD. When you say the "same rates," do you mean the same rates as from New York?

MR. WALKER. Yes, sir.

MR. SHACKLEFORD. Ought not the rate from New Orleans, in order to compete for that sort of freight, to be lower than the rate from New York?

MR. WALKER. No, sir; I do not think so, because naturally there is a certain territory which will feed New Orleans, and a certain other territory which will feed New York, according to the rate from the initial point. My idea in making that arrangement was that the beer from St. Louis would go that way instead of going by way of New York, as it had been doing, and that such rates probably would draw cargo from as far north as Chicago, and take in the whole Mississippi Valley.

MR. SHACKLEFORD. Have you been shipping St. Louis beer from New York?

MR. WALKER. Yes, sir; from St. Louis to New York, and then south. Not on through rates. We do not make any through rates on foreign business from the interior. That is principally because of the customs regulations.

MR. SHACKLEFORD. Now, to get St. Louis beer, for instance, from New York, say, what would be its destination?

MR. WALKER. Generally Colon or Panama.

MR. SHACKLEFORD. And that would be distributed?

MR. WALKER. It goes into consumption.

MR. SHACKLEFORD. It goes into consumption there?

MR. WALKER. Yes, sir.

MR. SHACKLEFORD. You do not ship any for South American ports?

MR. WALKER. I think the ports on the other side get their beer from Chile.

MR. SHACKLEFORD. Flour and grain that went from that direction would go from the port of New York?

MR. WALKER. Most of the flour on the Panama side goes down from San Francisco, and it has been a very strongly competitive article. We have competed as far as possible with the Pacific Mail to get some of the business in New York, but the consumers like the strong western flour better, and we can not keep the trade to the New York side.

MR. STEVENS. How about machinery from Chicago and Ohio: which way would that move?

Mr. WALKER. To the foreign ports that would move by the way of New York under the old arrangement. I do not know whether any of it has been moved through New Orleans this last year or not. The shipments we deal with to foreign ports are all handled by commission merchants in the city of New York. They go to the various consuls and take out consular invoices, and make the declarations at the custom-house which the United States laws require regarding exports, and all that tends to keep the business in the form of originating at New York, although I think that at New Orleans the steamship agency has arranged to do the clearing for the interior shippers. Of course the result of that has been to make the New York shippers very much provoked. They see their business passing away. "Well," I say, "you can not have it always."

Mr. SHACKLEFORD. That is the point I was trying to get some light on, whether or not there is not a large possible trade from Gulf ports by way of the Isthmus.

Mr. WALKER. I should think there was. I should think the whole Middle West could ship that way very profitably.

Mr. ESCH. You say the United Fruit Company, from Gulf ports to the Isthmus, does not engage in San Francisco traffic?

Mr. WALKER. They are all foreign steamers. They are mostly Norwegian steamers.

Mr. ESCH. Would the fact that you had an exclusive contract with the Pacific Mail have any effect on that?

Mr. WALKER. No, sir; the Pacific Mail is bound to take our freight, everything we can give them at Panama, and we could have a line from every port in the United States on the Atlantic side to the Isthmus and they would be bound to carry that freight forward from us on the other side.

Mr. ESCH. Yes.

Mr. STEVENS. There is no reason under the law why goods billed from San Francisco to the Isthmus should not be rebilled from the Isthmus to New York, is there?

Mr. WALKER. That question came up some years ago when some one shipped some freight from here to Europe, and then reimported it in bond at San Francisco, and I understand that the Government won on its contention, and forced the shipper to pay duty on those American goods that had been shipped to Germany and reimported. That is precisely parallel to the case you suggest.

Mr. STEVENS. So that freight has to be billed through in order to escape duties?

Mr. WALKER. Yes, sir; the customs authorities require us to file at the custom-house in New York a full statement of all the cargo that we carry out of New York for San Francisco, and it is under the charge of the American consul at the Isthmus, and he sees that no foreign cargo is substituted for the American cargo that left here, and then the collector at San Francisco checks the cargo discharged by the Pacific Mail as the cargo that left New York.

Mr. STEVENS. Then that business, under the law, must be carried in American vessels?

Mr. WALKER. Yes, sir; that is certain.

Mr. STEVENS. Now, on that point, I would like to pursue this for a moment, Mr. Walker, on the line on which I was questioning Mr. Drake this morning. Will there not be quite a large increase of busi-

ness from Puget Sound and San Francisco to the Isthmus on account of the construction of the canal in the carriage of supplies, and so forth?

Mr. WALKER. I should imagine that there would be, because the Pacific coast can compete for delivery there with delivery from the Atlantic coast.

Mr. STEVENS. Yes. Now, that large increase of business will attract tonnage, will it not?

Mr. WALKER. I should think it would.

Mr. STEVENS. So that when your contract with the Pacific Mail Steamship Company shall be completed next July there will be an inducement for those ships to continue in that Pacific coast business?

Mr. WALKER. Well, as long as they could get those supplies.

Mr. STEVENS. And other business. You see the point? In the first place, there is the Pacific coastwise business between the Pacific coast and the Atlantic coast, and the Gulf, which must be carried in American bottoms. There is one source of freight. The second source would be the amount of construction material sold by Pacific coast people, such as lumber and rough stuff like that——

Mr. WALKER. Yes, sir.

Mr. STEVENS (continuing). To the canal authorities for the construction of the canal. Now, those two sources of business will attract tonnage from the Pacific coast to the Isthmus, will they not?

Mr. WALKER. You spoke, as I understood, of coastwise traffic?

Mr. STEVENS. Yes, sir.

Mr. WALKER. So far, no American vessels have been found to do that particular business for the Government. The traffic has moved in the German steamers which go from Puget Sound to San Francisco, and then to some port in Mexico, and to another and another port, and so on down the coast, carrying freight and discharging at these different ports, lifting freight from each port and carrying it to ports farther down and making the port of Panama incidentally a port of call.

Mr. STEVENS. You understand why that was carried in German vessels?

Mr. WALKER. I understand.

Mr. STEVENS. Because they would break cargo, and the others would not. An American vessel would require a full cargo, and the German would break cargo if required to do so.

Mr. WALKER. The German vessel is the omnibus, taking cargo and dropping it in small lots, in that way.

Mr. STEVENS. When this traffic increases so that there will be more vessels, will there not be American vessels to carry that freight?

Mr. WALKER. That would depend entirely on what rates those Germans would be willing to take and whether or not those vessels could get a better freight than freight to Panama. American vessels are so few that generally they can afford to go in some protected territory and leave these open ports to the foreign flags.

Mr. SHACKLEFORD. What do you mean by "protected territory?"

Mr. WALKER. Such as the coastwise business; business that the foreign ships can not take, business that is protected by our coastwise laws.

Mr. SHACKLEFORD. Were it not for that this traffic would be profitable, would it not, which Mr. Stevens has spoken of?

Mr. WALKER. Well, I should think if a foreign vessel finds it profitable, that a foreign vessel which has an American registry ought to find it profitable. They say, however, that they do not. They say that under the American flag they are obliged to pay higher wages; but I have no personal knowledge on that point. I do know, though, that I recently had occasion to find a vessel to carry a large number of cars for the Commission to the Isthmus, and that I went to an American owner of a vessel which recently secured American registry, and the only one I know of that was capable of carrying those cars because of the size of the large hatches, and he did not care to compete for that business when he knew that I was inviting bids from foreign vessels. He said that there was no use; that he could not compete. Now, whether his vessel had become capitalized at too high a figure I do not know. The probability is that he could find more profitable employment for her where the business was confined to the American flag.

Mr. STEVENS. Now, supposing that Congress extended the coastwise laws to embrace the Isthmus, providing that the trade between the Isthmus and any part of the United States should be coastwise trade, what would be the effect of such a provision as to the rates between the United States and the Isthmus, and the traffic between the United States and the Isthmus? Would it increase rates or increase traffic?

Mr. WALKER. You mean through rates?

Mr. STEVENS. I mean the rates, through and local rates.

Mr. WALKER. That would naturally keep rates up by limiting competition.

Mr. STEVENS. It would increase rates some at first?

Mr. WALKER. It would naturally increase rates.

Mr. STEVENS. Would it not also increase facilities? For instance, the Pacific Mail would certainly continue in that business, because it would be coastwise business.

Mr. WALKER. It would not change the status of the Pacific Mail Company, because that is an American line now.

Mr. STEVENS. Then it would have a monopoly, and would carry all of that traffic, irrespective of any contract?

Mr. WALKER. It would not alter what they do now, because the freight to and from the various ports of call in Central America and Mexico can be carried in foreign vessels. I heard a question which was asked of Mr. Drake this morning which I think bears on what you are asking now, and that question was about the Pacific Mail keeping in the business under any circumstances. The most profitable traffic that any of us have—the most profitable single item—is the coffee that moves from Central America to Europe. The great bulk of that moves in January, February, March, and April, and at that season anybody who has a ship down there would like to do that business, take the cream, and not run any other time of the year. Of course the wish of the Pacific Mail Steamship Company is to prevent that tramp business by way of the Isthmus, and, in order to induce the Pacific Mail to keep up a regular weekly service, we made that exclusive arrangement which is about to expire, to protect them in this good, paying business, while they are making the regular service for the less remunerative business of the other parts of the year. The through rate between New York and San Francisco

averages about \$12 a ton out, and about \$9.74 a ton home. That was last year. Half of that goes to the Pacific Mail and, of course, it is not a very remunerative business for the long haul. The coffee they take up in Central America is hauled from 500 to 1,000 miles, I suppose, and they put it in the place of cargo which they have discharged on the way down from San Francisco. In other words, between San Francisco and Panama, steamers receive practically two freights for the same room, whereas on the cargo from San Francisco to New York if they only get the one.

Mr. STEVENS. So that that traffic is much more profitable than the through traffic from New York?

Mr. WALKER. The foreign traffic is very much more profitable to us all. In fact, if we had nothing but the San Francisco traffic to go via the Isthmus we would all have to go out of it—that is, with the American ships. I think if we had some of the cheap foreign tramps, if they could do that business (United States coastwise), they might be able to make money on it. They would take ten days to run from New York to the Isthmus instead of seven.

Mr. STEVENS. And they would take two weeks running up?

Mr. WALKER. A direct line would take two weeks. The Pacific Mail are about twenty-two days making the trip, including the stops between Panama and San Francisco.

Mr. SHACKLEFORD. Those stops delay them very greatly?

Mr. WALKER. I suppose those stops account for a week.

Mr. STEVENS. If the railroad is subordinated to the construction of the canal, so that freight is delayed, what difference will that make on the volume of freight that would be moved?

Mr. WALKER. The business would shrink. My own opinion of that is that the subject would be forced upon the State Department. I think that the lines in Europe which have interests in carrying freight to the Isthmus and have been making a profit would interest their home governments to insist that the line that had been kept open there for fifty years should be kept open for the commerce of the world.

Mr. STEVENS. Do you think the treaty would affect that?

Mr. WALKER. That is not the question. The question would be that the United States, by becoming the owner of the railroad and refusing to give the facilities which the world had enjoyed heretofore on the Isthmus, would be injuring all these foreign capitalists.

Mr. ADAMSON. Have you any reason to fear that the railroad can not do the work we need from it in building the canal, without impairing its usefulness?

Mr. WALKER. I have not the slightest doubt that the railroad can be operated so as to take care of the traffic and to build the canal.

Mr. ESCH. It is a single-track railroad.

Mr. WALKER. Yes, sir; but I should say that it should be double tracked.

Mr. ADAMSON. There are many, many miles of double track—of long sidings.

Mr. WALKER. Yes, sir.

Mr. ADAMSON. It struck me that it was in better condition than many of the trunk lines in this country.

Mr. WALKER. Yes, sir.

Mr. LOVERING. And they have the rails, have they not?

Mr. WALKER. Yes, sir.

Mr. STEVENS. Would not this be true, that any difference in the traffic between New York and San Francisco would make a difference in freight rates between New York and San Francisco?

Mr. WALKER. Anything that handicaps the Isthmus route leaves the railroads free to make an agreement with the one concern that has seen fit to establish a steamship line via Magellan, and they certainly would agree to get all there was in the business out of it.

Mr. STEVENS. So that you think the one regulator is the Isthmus route?

Mr. WALKER. Yes, sir.

Mr. SHACKLEFORD. And it will cease to be a regulating route if it has not its present connection with a steamship line?

Mr. WALKER. Yes, sir. Certainly you can not do anything with this little 48-mile railroad if you have not a steamship line there to give it an outlet.

Mr. STEVENS. Yes; on both ends?

Mr. WALKER. Yes, sir.

Mr. ESCH. Your total tonnage was about 400,000 tons last year?

Mr. WALKER. Yes, sir; on the Isthmus.

Mr. ESCH. What is the total of the transcontinental tonnage; have you any idea?

Mr. WALKER. No, sir. I looked it up several years ago. I think it was about four years ago, and at that time we carried one-sixth of the total business from the Atlantic coast territory to the Pacific coast.

Mr. STEVENS. One-sixth of what?

Mr. WALKER. Of the total tonnage moving from the Atlantic seaboard to the Pacific seaboard of the United States.

Mr. STEVENS. That would not include the fruit shipments?

Mr. WALKER. I learned from Mr. Stubbs the number of tons that were carried by the transcontinental railroads, and I found that there were carried by the way of the Straits of Magellan one-sixth. We carried one-sixth, and together with what Magellan carried that made one-third of the business.

Mr. STEVENS. That would include general merchandise, but not fruits?

Mr. WALKER. I do not know whether Mr. Stubbs included the fruit or not. He could not have included fresh fruits, because they are not a factor in the business of the Isthmus route, which occupies a month in transit.

Mr. STEVENS. Fruits were excluded from that estimate, then?

Mr. WALKER. Yes, sir. I do not know whether it included dried fruits.

Mr. STEVENS. You say that you carried a sixth and the Straits of Magellan a sixth?

Mr. WALKER. Yes, sir. At that time they had only sailing vessels, and they were building then those large steamers which they have since put on. The question was whether the Isthmus and the transcontinental lines would be wiped out of existence or not by the tremendous capacity of those big vessels. A sailing vessel was of 3,000 tons capacity, but those big fellows—those steamers—were 12,000 tons.

Mr. SHACKLEFORD. What has been the effect of that?

Mr. WALKER. The coast business have grown; the business is very much larger since the Philippines have been opened up. I do not know whether our business has increased in proportion to the others or not, but our business has increased all the time.

Mr. SHACKLEFORD. You do not know what has been the effect of the Magellan business?

Mr. WALKER. The Magellan steamers are running full. The next steamer can not take any more freight. She has a full cargo. They run a regular schedule—once a month.

Mr. SHACKLEFORD. Would a reduction in your rate increase the traffic as against the Magellan route?

Mr. WALKER. Undoubtedly; if we carried our freight cheaper than we are taking it now we would get a great deal more freight, if we could carry it.

Mr. STEVENS. You do not get any of the Hawaiian sugar business?

Mr. WALKER. No, sir.

Mr. STEVENS. That all goes by the Magellan route?

Mr. WALKER. The sugar?

Mr. STEVENS. Yes.

Mr. WALKER. I do not think it all goes by the Magellan route. Some of it has gone to San Francisco, and moved over the Southern Pacific to New York.

Mr. SHACKLEFORD. What is the Isthmus rate as compared with the Magellan rate?

Mr. WALKER. Sometimes we have to take a lower rate than the Magellan line. For instance, I have in mind the one item of sapolio. A grocer carries boxes of sapolio on his shelves, and to get them dirty or break them in rehandling at the Isthmus forces the consignee to the expense of repacking. Shelf goods can go on the Magellan steamer in New York and be landed in San Francisco in first-class condition. I just take that as an instance.

Mr. SHACKLEFORD. What is it in general?

Mr. WALKER. In general I think our average rate is higher than theirs.

Mr. ESCH. In stating that you carried one-sixth of the total traffic, did you include there the traffic that passed from the Atlantic to the Pacific side?

Mr. WALKER. Yes; the total traffic.

Mr. ESCH. The total traffic?

Mr. WALKER. Yes, sir.

Mr. ESCH. Then the line, in managing and controlling one-sixth of the transcontinental traffic, would have sufficient to regulate the rates on the transcontinental railroads?

Mr. WALKER. No, sir; we control a third.

Mr. ESCH. That is, your route and the Magellan route control one-third between them?

Mr. WALKER. Yes, sir; they carried a sixth and we carried a sixth.

Mr. LOVERING. How many independent transcontinental lines are there?

Mr. SHACKLEFORD. Would not that be a very difficult question to answer?

Mr. LOVERING. I thought that he might answer it.

Mr. WALKER. I suppose there are the Southern Pacific, the Atchison, the Northern Pacific, and Canadian Pacific. I think others are merged together.

Mr. STEVENS. The Union Pacific and the Great Northern are two more.

Mr. WALKER. The Union Pacific and the Southern Pacific are synonymous to me. I thought that the others were left separate. I thought the merger suit had settled that.

Mr. STEVENS. Settled that they should be kept separate?

Mr. WALKER. Yes, sir.

Mr. LOVERING. You say the freight rate from New York to San Francisco via the Panama Railroad is \$12. What class of freight do you refer to in that?

Mr. WALKER. That is the average rate on the total tonnage.

Mr. LOVERING. Now, what is the transcontinental rate; do you know that?

Mr. WALKER. I have no idea. I would have to know their total tonnage and total revenues to get at that.

Mr. MANN. How do you get the average rate on that?

Mr. WALKER. I take the total number of tons and divide into the total revenue, and it shows that I got \$12, on the average, per ton.

Mr. MANN. That, of course, has nothing to do with the average rate?

Mr. WALKER. No, sir. A great deal of that freight only pays \$9 a ton.

Mr. SHACKLEFORD. For comparison, take some commodity and make a comparison between the rate on your line and the transcontinental line.

Mr. WALKER. The easiest comparison is that my rate for less than carloads is 30 per cent less than theirs.

Mr. SHACKLEFORD. Do you make a rate 30 per cent lower than the transcontinental rate?

Mr. WALKER. Not absolutely. I do not have force enough to work up a book like that [indicating pamphlet], so I send to the commissioner and get that book and give my billing clerks a tariff, and I say to them "Bill according to that." That is the transcontinental classification to which I refer [indicating pamphlet].

Mr. MANN. Now, do you make a tariff rate—you have a published tariff rate?

Mr. WALKER. Yes, sir.

Mr. MANN. Is that published tariff rate based on the 30 per cent discount from the transcontinental published rate?

Mr. WALKER. Yes, sir. It reads in this way. I first have a set of class rates running from \$1.80, first class, down to class E, 70 cents. But practically little or no freight moves under those rates, because the transcontinental lines have covered nearly everything we carry by a commodity rate.

Mr. MANN. I was going to ask you how many commodity rates you have.

Mr. WALKER. As many as they have. I take their tariff.

Mr. MANN. They do not have a very large number of commodity rates, do they?

Mr. WALKER. From New York to San Francisco?

Mr. MANN. Yes, sir.

Mr. WALKER. They have 65 pages of them. They cover pretty nearly everything that moves.

Mr. MANN. Sixty-five pages of commodity rates?

Mr. WALKER. Yes, sir. Now, my instructions to the billing clerks are that the commodity rates from New York will be those of the transcontinental west-bound tariff, in effect at the time of shipment, less the following discounts: Carloads, 20 per cent; less than carloads, 30 per cent, observing a minimum of 40 per cent per hundred pounds—\$8 per ton.

Mr. MANN. In other words, your rates are less, 20 per cent less, than the transcontinental carload rates, and 30 per cent less than less carload rates?

Mr. WALKER. That is right, as a general proposition.

Mr. MANN. But you do not carry anything at less than 40 cents, as a minimum rate?

Mr. WALKER. That is the lowest rate we take.

Mr. MANN. Do you ever make any concessions?

Mr. WALKER. There are large houses in San Francisco with which we made arrangements to carry all of their consignments at the less than carload rate without regard to the quantity, because the Morgan line, the Southern Pacific Company, were prepared to allow large shippers to accumulate their cargo from the interior on the wharf in New York until there was a carload, and then bill the accumulation at the carload rate.

Mr. MANN. You said a moment ago "At the less than carload rate." You meant to say at the carload rate?

Mr. WALKER. Yes, I meant the carload rate, although less than a carload moves at the particular time. It may be that when cargo for one consignee arrives at the Isthmus there may be a carload to cross the Isthmus, by the accumulation, or there may not be. But I can not afford the space on our wharf to accumulate that cargo, as our wharf has to be used for discharging as well as loading ships, which limited space in New York forced me to adopt that plan with the larger shippers in San Francisco.

Mr. MANN. Which, of course, is a violation of the law which we have put upon railroads. But that does not apply to you, of course.

Mr. WALKER. That is what I thought. We have never felt that the interstate commerce law applied to our line, which is a water line. That 48 miles of road across the Isthmus hardly counts for anything else but a connecting link.

Mr. MANN. It might be a question whether it comes under the sovereignty of the United States. Did you ever make any other concessions or pay any rebates or give any preferences in any other ways?

Mr. WALKER. No, sir; we have never made any arrangement with any shipper that we would not make with any other shipper under the same circumstances.

Mr. STEVENS. And all published?

Mr. WALKER. Yes, sir.

Mr. MANN. You say your rates are based on the discount off the regular published transcontinental rates. From those rates do you give any discounts?

Mr. WALKER. Yes, sir; we make changes when we find that those rates are not low enough to get a particular class of business and we want that business. In such a case we will make another rate for it.

For instance, I have a rate with one company of 45 cents a hundred pounds from New York to San Francisco. The same rate applies to the shipments of another company from another section. According to my tariff I would make the transcontinental rate less the discount and pay the freight from the shipping point into New York if it did not exceed 20 cents a hundred pounds.

MR. MANN. What would be the transcontinental rate from New York?

MR. WALKER. On this class of goods?

MR. MANN. On that class of goods.

MR. WALKER. Well, some of it would be 75 cents a hundred pounds.

MR. MANN. And upon that you would make a discount of 20 per cent for carload lots?

MR. WALKER. Twenty per cent would be 60 cents.

MR. MANN. And you make a rate of 45 cents?

MR. WALKER. The freight into New York might be 20 cents, which would get me down to my minimum of 40 cents; but I get 45 cents from it.

MR. MANN. What is that, wire?

MR. WALKER. That was wire.

MR. MANN. Your rate on wire is 60 cents from New York to San Francisco?

MR. WALKER. Yes, sir.

MR. MANN. Based on the transcontinental rate?

MR. WALKER. New York and common points.

MR. MANN. I understand. Now, in order to get points west of New York in the Atlantic seaboard territory you pay the rate from those points to New York?

MR. WALKER. If it does not exceed 20 cents.

MR. MANN. I understand, but that does not affect your rate from New York. Your rate is 60 cents. Now, what rate do you make to the American Wire and Steel Company?

MR. WALKER. The shipments of the American Wire and Steel Company move from Worcester, Mass., formerly the Washburn, Moen & Co.

MR. MANN. Is that a published rate?

MR. WALKER. That is a published rate [referring to printed tariff]. These things are not distributed broadcast, if that is what you mean.

MR. SHACKLEFORD. They are published where you and they can see them?

MR. WALKER. Yes, sir; or anybody else.

MR. MANN. You say "anybody else." What we want to do is simply to get at the facts.

MR. WALKER. I understand. I have nothing to conceal. I have given these tariffs to everybody who has asked for them.

MR. MANN. You have been doing this for the benefit of this property?

MR. WALKER. Yes, sir.

MR. MANN. But, on the other hand, the Government comes in now, and it is a question whether the Government can afford to do those things itself which it forbids other people to do, and we wish to ascertain what the fact is, from the Governmental point of view, not from the point of view of the man who works for the company.

MR. WALKER. Now, Mr. Chairman, the point in that matter is where we compete; if I publish a tariff via the Isthmus, and say that my

rates are 30 per cent less than all-rail rates on less than carloads, and 20 per cent less for carloads, that is nothing but an agreement with the transcontinental lines on differentials. Now, I do compete, and have increased the business to 50 per cent greater than what it was when I first went with the line.

Mr. MANN. If you do not get business enough on that differential, you cut rates?

Mr. WALKER. I go farther away, generally, to get the business. I go to St. Louis and Chicago to get the business; and that partially is what makes the so-called "postage-stamp" rate on the whole territory east of the Mississippi River, because I go anywhere to get the business, just as the Magellan Steamship Line does.

Mr. MANN. And we have a great complaint about that, just because your line does that thing.

Mr. WALKER. You can not bottle the ocean.

Mr. MANN. We can make you live up to the published tariff rate, and if the Government requires our railroads to live up to the published rates, we could compel you to live up to them.

Mr. LOVERING. Do they live up to the published tariff rate?

Mr. WALKER. I believe they do. I can not see why they should cut it.

Mr. STEVENS. You can not compel the Hawaiian Steamship Company to live up to it?

Mr. WALKER. No, sir; they do just as they please; and we have been put in the same category. Of course, if the Government wants the traffic manager to carry freight for nothing, that could be done, or, on the other hand, the rates could be made prohibitive if the Government should so decide.

Mr. STEVENS. Do you think it is just, when the Government compels railroads to stop preferences and live up to published tariffs, and to take into consideration the long and short haul matter, that the Government should proceed to disregard everything in its own case, and cut rates and give preferences?

Mr. WALKER. I think it is on that long and short haul we are working. It is absolutely water competition. We can not send our ships to sea unless they are properly loaded. They have to be properly ballasted, and if I can not get freight on the spot at one price, I take it at another.

Mr. STEVENS. That is the way with all steamship business?

Mr. WALKER. That is so with all steamship business all over the world.

Mr. MANN. That used to be so with all railroad companies, and would be now if we did not interfere with them.

Mr. WALKER. That is the natural law of competition. The railroads have been very much benefited by the interstate commerce law, there is no doubt about that; and the public have paid a great deal more freight than they did when the railroads were going as they pleased. There is no question about that.

Mr. STEVENS. And the more we regulate the higher the rates will be?

Mr. WALKER. Yes, sir.

Mr. ESCH. How much of this freight that you have shipped out of New York to San Francisco originates right in New York, and how much is gathered into New York from the outer territory?

Mr. WALKER. Almost all of it comes from the factories outside.

Mr. ESCH. And within what radius?

Mr. WALKER. It is difficult to tell, because, while we absorb that 20 cents, there are shipments made from points that have to pay higher, and then the difference is added to the rate. For instance, from a place like Amsterdam, N. Y., on certain classes of goods we are charged 31 cents into New York. Now, I would first take 20 per cent off of the rate, if it was a carload, and then I would absorb that 20 cents and add the 11 cents to it, so that it really would not be 20 per cent lower from Amsterdam to San Francisco than the transcontinental rate.

Mr. ESCH. And yet your transcontinental rate really limits?

Mr. WALKER. It is supposed to, because it is thought that unless a shipper can get his rate down 20 per cent lower than the railway rate he will not give us the business.

Mr. ESCH. Because it takes longer to ship it?

Mr. WALKER. Yes, sir. But of course he figures closer than I would. He knows the value of the goods and what the insurance on them would cost him, and he can figure out whether my rate would be to his advantage by way of the Isthmus, or whether he had better pay a higher rate across the country.

Mr. ESCH. And yet in no case where you have allowed a special rate, as you have specified, do you permit your rate to go lower than \$8 a ton?

Mr. WALKER. That is a matter we have agreed on with the connecting carrier on the other side, that we will not allow him to take freight from San Francisco to New York at less than \$8 a ton unless he consults with us, and he will not allow us to take freight at a lower rate than that unless he gives his permission.

Mr. ESCH. Do you exercise that permission, either of you?

Mr. WALKER. It has not come up under the present contract, because we have been able to keep on increasing the business, and doing a good business at, as I have stated, an average of \$9.74 a ton, the lowest rate from San Francisco being \$8, which is on lead. A large part of the business from San Francisco to New York is the wine, and that pays us 55 cents a hundred pounds, which would be \$11.

Mr. SHACKLEFORD. Would there be any difference in the rate of insurance on a cargo from New York by way of the Isthmus and one from New Orleans by way of the Isthmus?

Mr. WALKER. I think the underwriters would make about the same rate. You know they consider the ships outside of the difference in the voyage. Our voyage is about two days longer from here to the Isthmus, but our ships are larger and are a better class of boats.

Mr. SHACKLEFORD. Suppose the case of the same class of boats, and loaded with the same class of cargo, out of New Orleans by way of the Isthmus, and out of New York by way of the Isthmus?

Mr. WALKER. I think if I was running the line from New Orleans I would remind the underwriter that there was only five days' risk instead of seven, and that he ought to give a lower rate from New Orleans than he gave the line from New York.

Mr. SHACKLEFORD. Do you think he would allow that?

Mr. WALKER. I can not tell you.

Mr. SHACKLEFORD. Is there any business that goes from New Orleans to San Francisco by way of the Isthmus?

Mr. WALKER. No, sir; the United Fruit Company charter Norwegian and English vessels, and anything they can get. Foreign vessels can not carry cargo from a port in the United States destined to another port in the United States.

Mr. MANN. There is nothing now to keep them from running from New Orleans to the Isthmus?

Mr. WALKER. No, sir; but that business can not go through. They can not compete with the Southern Pacific.

Mr. MANN. That is what I understand. They can not compete with the Southern Pacific, but there is nothing to keep them from shipping to the Isthmus?

Mr. WALKER. No, sir; the law prevents them from shipping from New Orleans to San Francisco except in an American bottom.

Mr. MANN. Give us some idea of the insurance rates. Of course, there is no insurance rate on the transcontinental railroads.

Mr. WALKER. There is a net rate by our line of about one-half of 1 per cent from New York to San Francisco. I think it is nine-sixteenths.

Mr. MANN. Have you any idea how much that would average per hundred pounds?

Mr. WALKER. I can not tell. It changes with the value of every article shipped.

Mr. MANN. I understand; but you gave us the average freight rate and I wondered if you had any idea of the average insurance rate.

Mr. WALKER. I have no idea of the average value of our cargoes. I suppose you could find out from the reports from the custom-house, but I have never looked it up.

Mr. MANN. You make the rate from New York to San Francisco?

Mr. WALKER. The Panama Railroad; yes, sir. I do.

Mr. MANN. The Panama Railroad? Does the Pacific Mail make the rate from San Francisco to New York?

Mr. WALKER. Yes, sir; they do.

Mr. MANN. Absolutely?

Mr. WALKER. Yes, sir. We have agreed on a set of tariffs that are satisfactory.

Mr. MANN. With power to modify them?

Mr. WALKER. Yes, sir.

Mr. SHACKLEFORD. Who are "we?"

Mr. WALKER. Either line, reciprocally. They reduce the rate there when it is necessary, and we reduce the rate of freight here when it is necessary.

Mr. SHACKLEFORD. You can not make a rate from San Francisco to New York?

Mr. WALKER. No, sir.

Mr. SHACKLEFORD. And they can not make a rate from New York to San Francisco?

Mr. WALKER. No, sir.

Mr. LOVERING. The rates are the same?

Mr. WALKER. Going both ways?

Mr. LOVERING. Yes.

Mr. WALKER. Not necessarily; no, sir.

Mr. MANN. Even if you base your rates upon the transcontinental railroad rates, making so much of a discount from them, still when you have to reduce your rates in order to get business the rates would not be the same the two ways?

Mr. WALKER. Not necessarily; no, sir.

Mr. MANN. Do they make a reduction on rates?

Mr. WALKER. The Pacific Mail?

Mr. MANN. Yes.

Mr. WALKER. No, sir; they publish a regular tariff rate which, on wine, for instance, is 55 cents a hundred pounds. Now, if I remember correctly, the all-rail rate is 75 cents a hundred pounds. That is 20 cents a hundred pounds more, so that our rate is more than 20 per cent less than the rate all rail, or rail and water rate via New Orleans.

Mr. MANN. The Pacific Mail being controlled by the Southern Pacific, and the Southern Pacific being controlled by the Union Pacific, and then the Pacific Mail having the power to make the rate from San Francisco east, do you think there is any tendency to keep up rates on that account?

Mr. WALKER. Well, I should suppose that that consideration would be in the mind of the man that makes the rates. But we had a difference with the Pacific Mail four years ago, and they lost over \$300,000 as a result of that, and they do not want to have the same thing over again. So that they give us just about as much freight as we have so far been able to handle. In other words, in 1897 their business to New York from San Francisco was about 12,000 tons, and all the persuasion we could give them would not make them increase it materially until we were about to give them a notice that we would not go on with the contract, and so, during the last year of that contract they ran up to quite a respectable figure. I wanted to get up to about 36,000 tons a year, and after the rate war of eighteen months duration our two companies came together in the present contract, and they have taken the business and have accepted our suggestions. Last year the business they gave us was 30,000 tons.

Mr. MANN. What do you mean by "30,000 tons?"

Mr. WALKER. I mean they gave us 30,000 tons of cargo from San Francisco to New York.

Mr. MANN. I understood you to say a while ago that the total freight carried was 400,000 tons.

Mr. WALKER. The San Francisco business is only one-fifth of the business that the railroad does.

Mr. MANN. I understood from what was said this morning that the percentage of that business was 55 per cent.

Mr. WALKER. You have confused the large business with Mexico and Central America to and from New York and Europe.

Mr. MANN. I understood that it was stated that that was the amount that you got with the Pacific Mail Steamship Company?

Mr. WALKER. Yes; but the Pacific Mail—

Mr. MANN. That is what I am asking you now, about the business that you get from the Pacific Mail Steamship Company.

Mr. WALKER. We were talking about San Francisco rates, as I understood it.

Mr. MANN. I beg you pardon me. I did speak of the San Francisco rate, but I meant the total of the business.

Mr. WALKER. Taking the whole of the business of the Isthmus, a very large amount of it the Pacific Mail Steamship Company brings to us from Central America, and it goes to Europe, and when we

speak of 55 per cent of the business being in connection with the Pacific Mail, that is 55 per cent of the Isthmus through traffic.

Mr. MANN. Mr. Drake spoke of 55 per cent of the business in connection with the Pacific Mail, and in connection with Pacific coast points to New York. At least, that is what I understood. That was not what he meant? There is not 55 per cent of the business that goes around to Pacific coast points through your steamship line and goes up to New York?

Mr. WALKER. I do not think I follow that question.

Mr. MANN. Mr. Drake stated that 55 per cent of the business you carried from Colon to New York, as I understood him—

Mr. WALKER. With the business of the Pacific Mail connection?

Mr. MANN. No, sir; of the business that you carried on your steamship line from Colon to New York; that 55 per cent was over half of the total business.

Mr. WALKER. I think that in response to that Mr. Drake testified that 50 per cent of the through business of the railroad was done by the company's own steamships, and that 55 per cent of the business done by the railroad was done in connection with the Pacific Mail Steamship Company.

Mr. DRAKE. That is right.

Mr. WALKER. As a matter of fact, our business last year—the steamship business—was 48 per cent of the through tonnage across the railroad.

Mr. MANN. What do you mean by the “through tonnage?”

Mr. WALKER. Not including business between Panama and Colon—the local business.

Mr. MANN. Do you mean the business emanating from the Pacific Mail and ending on your line?

Mr. WALKER. No, sir; business starting with our line from station to station between Panama and Colon. There is quite a lot of that.

Mr. MANN. When you say that you could not carry any more business, or that they could not furnish you any more business, the board of directors could pass a resolution to provide two new vessels?

Mr. WALKER. Yes, sir.

Mr. MANN. Was that with the view of taking care of increased business?

Mr. WALKER. That was the idea.

Mr. MANN. Or in connection with helping you out?

Mr. WALKER. The whole business of the Isthmus route can be increased.

Mr. MANN. If you had two new vessels from Colon to New York, and made a proper rate, do you think those vessels could get all the business they could carry?

Mr. WALKER. Without doubt.

Mr. MANN. If we should, in addition to that, put a line on the Pacific, would we get more business at a low rate or would we lose business by losing the Pacific Mail line?

Mr. WALKER. If you put a line on the Pacific and run it regularly, you can wipe the transcontinental lines off the face of the United States.

Mr. MANN. If you make the rates regular?

Mr. WALKER. You can not leave your barrels of wine on the Isthmus over a week, in that climate, though.

Mr. MANN. You mean by handling things up to date?

Mr. WALKER. Yes, sir; and giving them thirty-six days from New York to San Francisco, which is pretty near as good as the Canadian Pacific can give, we would get a great deal more freight.

Mr. ESCH. What is the average time for freight by rail from New York to San Francisco?

Mr. WALKER. I do not know what the average time is. The best time I ever heard of, outside of green fruit, was eleven days. When they had yellow fever in New Orleans, and the business was driven away from there to the Union Pacific, those fellows got the business across in fourteen days, as they wanted to keep it. The Southern Pacific had to push pretty hard when New Orleans opened up again to recover the patronage, and they got their time down to eleven days. But I guess it is more likely to be twenty-one days than eleven days. I do not know what the average time is, really.

Mr. DRAKE. I understand the average time is eighteen days. That is between the limits of eleven days and thirty-five days.

Mr. WALKER. I think I heard some one say the other day, in reading from the contract with the Pacific Mail Steamship Company, that they ran three steamers a month. That is the minimum which they can put on. But as illustrative of their willingness to help us out they are running regularly once a week. Our steamer is supposed to reach the Isthmus on Tuesday, and the freight should go by the next Tuesday on their steamer on the other side, and their freight, due at the Isthmus on the other side Sunday, should take our steamer, not on Wednesday, but the next Wednesday, on our side, so as to make a regular service between the ports of thirty-six days. When we run that way there is more demand for space, because the wine merchants in New York will calculate on getting, every week, so many barrels of wine, just enough to fill up their cellars and keep things just to their satisfaction, and they will not have to pay extra storage rates.

Mr. STEVENS. Can you not handle that stuff across the Isthmus in less than a week?

Mr. WALKER. We do when the steamers connect that way. For instance, we carry freight from New York to connect with the south carrier which should leave Panama on Thursday, and we get that across the Isthmus either on Thursday, or they wait until Friday to take it. We do a large business in that way with Ecuador.

Mr. STEVENS. So that you can make close connections?

Mr. WALKER. Yes, sir.

Mr. DRAKE. We can make it in two days, with proper equipment and connections.

Mr. MANN. What would be the facilities if we should run a line from Colon to New Orleans?

Mr. WALKER. Well, I think we would get some of the wine business, which is a very large traffic in New Orleans.

Mr. MANN. Is there any possibility of your getting any portion of the fruit business?

Mr. WALKER. Absolutely none. Dried fruit, do you mean?

Mr. MANN. I do not mean from California, but I mean from down there, which is now carried by the United Fruit Company's line.

Mr. WALKER. No, sir; they do not take anything from Colon.

Mr. MANN. They do take something from Colon, do they not?

Mr. WALKER. Not a thing.

Mr. MANN. Do they not touch at Colon?

Mr. WALKER. Yes, sir.

Mr. MANN. Do they not take up freight there?

Mr. WALKER. No, sir. They go off to their own plantations at Limon, and fill up there.

Mr. MANN. When we were there we were told that they did.

Mr. WALKER. Well, they do not. That is, they do not accept any through freight from us.

Mr. DRAKE. They did; but they do not now.

Mr. WALKER. When they wrote about the matter of the quarantine I asked about that, and they were not prepared to do it.

Mr. MANN. Is there not quite a fruit belt on the Pacific side?

Mr. WALKER. On the Pacific side?

Mr. MANN. Yes.

Mr. WALKER. No, sir; the fruit belt is on the Atlantic side.

Mr. MANN. You would not take that up; but is there not fruit on the Pacific side?

Mr. WALKER. No, sir; there is nothing raised there. There is no market.

Mr. MANN. That is what I mean. If you had a line so that they could get across there, there would be a market, then?

Mr. WALKER. You speak of fruit. I suppose you mean bananas, particularly?

Mr. MANN. Bananas and pineapples.

Mr. WALKER. Pineapples, I should think, would be shipped all right in crates; but I do not believe that bananas can be produced on the Pacific coast and shipped to Panama and rehandled across into another ship and put into New York at any profit. New York is going to get its banana supply from Port Limon and Jamaica and places from which it can be readily shipped.

Mr. MANN. I was thinking of New Orleans, and not of New York.

Mr. WALKER. There is the same thing at New Orleans. The United Fruit Company are established in the banana business—that is their first business—and they merely take the freight down to Colon because that gives them a freight out. It is the same way with one of the lines from Europe.

Mr. MANN. You never have considered it advisable to cater to the banana strip along the Panama Railroad, or to give them any reasonably low local freight rates?

Mr. WALKER. We have coddled that business from its inception, and we get less money on that than anything we handle on the line.

Mr. MANN. I should think so, judging from the rates you have on it, for I must say, with due respect to your road, I never heard of such high tariffs as were given us down there on local rates and local business.

Mr. WALKER. The rate on bananas from the line of the road to Colon was one-quarter of a cent a pound, silver, that is, one-eighth of a cent a pound, gold, and you could not get that rate on any railroad anywhere in the United States. Somebody must have shown you, not the special tariff that was provided for that particular business, but what they call the gold tariff, which was for the transit of the whole Isthmus, or between points on the Isthmus, and which was made in 1892 to govern all traffic except the local productions of the Isthmus.

Mr. MANN. Now, I talked with a good many people down there about the local business, and I did not find a single one——

Mr. WALKER. Are you speaking of bananas?

Mr. MANN. I am speaking of bananas, and other classes of business, too. I did not find a single person who did not make bitter complaint about the fact that your local rates were so high as to indicate that you did not care to do any local business.

Mr. WALKER. Well, the local rates——

Mr. MANN. And I supposed if that was the case you did not care to be bothered about it.

Mr. WALKER. I will tell you this, that the local rates have been changed since you were down there. They were under discussion when you were there. They have been under discussion for about three years at least. The old tariff of 1892 was allowed to drift on because every time we went near Colombia it was a question of "What will you give up for this, and that, and the other thing?" and that old tariff needed adjustment. For instance, we carried liquors for about 40 cents a hundred pounds, and on groceries we charged \$1.20 a hundred pounds.

Mr. ESCH. Silver?

Mr. WALKER. No, sir; gold. Now, if there was to be a distinction between the two, the liquors certainly should have paid the highest rate. I suppose the man who made that tariff had a partiality for the particular kind of traffic. I do not know what else caused it. It was a good while ago, and it is not in evidence, but in 1892 the local chamber of commerce at Panama took up the question of agriculture on the Isthmus, and the net silver tariff was issued. I have it here in this book, and I will read it if you want it.

Mr. MANN. Take the figures that you have just given, 12 cents a hundred on bananas for a local rate for probably 15 miles; in contradistinction to that you are willing still to make a rate from New York to San Francisco, with the two transfers at the Isthmus, of 40 cents.

Mr. WALKER. Not on bananas.

Mr. MANN. Not on bananas, but on something else. I must say that your local rate is still high.

Mr. WALKER. A transportation line can afford to carry lead at 40 cents a hundred pounds in a steamship, because she can be given nearly her full dead weight capacity of lead, and then you can pile in sea-island cotton on top of the lead, and it is just so much extra freight.

Mr. MANN. But we are not talking about lead or sea-island cotton.

Mr. WALKER. You were speaking of my 40-cent rate between San Francisco and New York. That is the rate on lead. Now, I can put 100 tons of lead in my ship, and fill her up with everything else, and that makes 100 tons more of cargo than if the lead was not there. The lead takes up practically no room in the ship.

Mr. MANN. But your average rate is what—a little over 60 cents?

Mr. WALKER. Yes; 60 cents from here out.

Mr. MANN. Those are average rates?

Mr. WALKER. Of course you understand that a transportation line can not take the lowest rate that it gets on any commodity that it handles, and apply that to all its business.

Mr. ADAMSON. You can carry 100 pounds of lead from here to the

Isthmus as cheaply as you can carry 10 pounds of bananas across the Isthmus?

Mr. WALKER. That is about the size of it. Now, as to the banana business on the Isthmus, what has made the particular trouble about that thing is the wish of the banana interests for our steamship lines to coddle it further. They have been at us to reduce the rates to New York, and I have explained to them over and over again that we can not afford to sacrifice our room to bananas. They want 160 feet in the ship for a ton of bananas, and we must pile them only 3 bunches high, and they must have nothing over that—all that open space, in order that those bananas may be in good condition. Now, I can put 4 tons of sugar in the same room that is required for a ton of bananas, and Peruvian sugar would pay from \$4 to \$5 a ton.

Mr. MANN. Of course you can. But it seems to me that either way proves that the freight rate is too high, or the freight rate is too low, as compared with your other rates. Do you or not want the business?

Mr. WALKER. In the handling of corporations it has been my business to figure so as to get the greatest amount of revenue that the traffic would yield.

Mr. MANN. Do you or not want to be bothered with the local business on the railroad down there?

Mr. WALKER. Yes, sir. I have tried to knock out the mules and the cayucas—the mules from Panama and the boats on the river from Colon which have largely supplied carriage to nearby towns along the railroad—but they are still running. That tariff went into effect on the 1st of February, and where the rate was 60 cents I cut it down to 20 cents for a distance of 15 miles out on the road. I have graded the rates all across on the roads. I had partially in mind when I worked that tariff out an old tariff that the Georgia legislature put out, with which I used to be familiar, and I took the classifications that were in effect that we had agreed upon with the lines from Europe, and I took the trunk line tariff used by the great railroads out of New York as a guide to proper rates for light goods charged by weight instead of by measure, as do steamers; so that I could make a weight rate across the Isthmus on everything. And I tried to be as fair as I could to those fellows.

Mr. MANN. You have made a very material reduction.

Mr. WALKER. Yes, sir.

Mr. MANN. Since this committee was in the Isthmus?

Mr. WALKER. Yes; an entire change. I can not tell how it is going to work out on the entire distance across.

Mr. ADAMSON. They told us that you charged \$10 a thousand on lumber from Colon. Do you charge that yet?

Mr. WALKER. There are two rates on lumber. Pine lumber less than an inch thick is third class, and pine lumber more than an inch in thickness is fourth class. The fourth-class rate from Colon to Panama is 30 cents a hundred pounds. The new tariff makes timber in carloads from \$3 to \$5 per ton, varying with the distance.

Mr. ADAMSON. \$10 a thousand feet?

Mr. MANN. \$10 a ton.

Mr. WALKER. I expect we are going to find discrepancies in this tariff, because I discarded the old one and made this up by considering these various tariffs that I have spoken of, and I have sent word

to the Isthmus to draw my attention to anything which is out of the way in it, as we would keep the type set up, so that we could correct it, because I expected some classes would advance rates, and others would reduce them. One item that has been brought particularly to my attention is kerosene oil, and that rate has dropped from 80 cents a case to 55 cents from New York to Panama, the reduction coming out of the railroad. It was made because I found that the trunk lines out of New York classified the oil, case oil in carload lots, as fourth class, and it was made fourth class, which is an illustration.

Mr. ADAMSON. Is the lumber good to handle on your steamships?

Mr. WALKER. Yes; it is very good freight, if not of very great length. Some of that Georgia lumber is 50 feet long, and that is pretty bad to handle.

Mr. ADAMSON. I want to get at the effect on the operation of your railroad company of that schedule that was enacted by the Georgia legislature.

Mr. WALKER. I was the New York agent of the Central Railroad of Georgia for eight years, and I was with them for twenty-three years, and of course I dealt only with the through rates, and that legislation just stopped the Central Railroad of Georgia from building two fine ships that they had planned. They said "If the legislature is going to tell us that we must carry fertilizers for so much, because the farmers need them and regardless of cost of transportation, we will quit." That was the effect of it.

Mr. LOVERING. You said when you undertook to alter the schedules heretofore you ran up against Colombia. What do you mean by that?

Mr. WALKER. Every time we wanted to do anything, to make any change in existing practices, Colombia would see some reason for asking for some kind of a concession, saying that it must be worth something or other, and that we should pay for every change we wanted to make. That was the theory of it. And we had to notify the Government when we made a change in the tariff.

Mr. LOVERING. Did you ever have to pay for anything?

Mr. WALKER. Not in connection with the tariff. I was not with them at the time they had paid before.

Mr. MANN. Did you have to obtain their consent to make a reduction in a tariff rate?

Mr. WALKER. No, sir; we had a right to change the tariff, but we gave them thirty days' notice that it was changed, under the contract between the Colombian Government and the Panama Railroad Company. I forget what article it is.

Mr. MANN. If you had a right to change the tariff, how could they hold you up?

Mr. WALKER. We could not change the tariff up and down just as we pleased. We could not go above some figures that had been agreed upon when the concession was made which allowed us to through bill freight.

Mr. MANN. But you could reduce the tariff?

Mr. WALKER. We had to give the same thirty days' notice.

Mr. MANN. They could not hold you up if you wanted to reduce the tariff?

Mr. WALKER. As I said, I wanted, when I altered that tariff, to readjust it, to advance some rates and to lower other rates, to get

them in a proper proportion, the rates one with the other, as we had in the United States.

Mr. MANN. It will be news to this committee, which has been hearing testimony about rate legislation for a long time, to know that the railroad rates in the United States have a proper relation to each other. We have been told so often by so many people that it was not so.

Mr. WALKER. That is my experience. I have been thirty-three years in the transportation business now—steamships and railroads—and, of course, the question of rates is a mere question of what the traffic will stand. That is the basis of getting at a rate.

Mr. MANN. Of course.

Mr. WALKER. But you certainly do not expect to carry a pound of feathers for the rate of a pound of lead. The railroad rates for light goods are proportionately higher. They are put in higher classes than the heavy freight that is going in the low classes.

Mr. LOVERING. That does not hold true.

Mr. WALKER. I did not understand you, sir.

Mr. LOVERING. That does not hold true.

Mr. WALKER. Not absolutely, but that is an aim. I have always had a curious sort of theory on the question of freight rates that you would really get a just tariff by charging so much a hundred pounds for weighty goods, and a rate for space occupied by light goods, besides a separate additional charge, a percentage on the value of the goods. That is not practicable, of course, but I mean that I have often thought of it.

Mr. LOVERING. Suppose you were transporting cotton at a density of 35 pounds or 20 pounds to the cubic foot?

Mr. WALKER. I do not think they make a difference on the rates.

Mr. LOVERING. Why should they not, on that?

Mr. WALKER. Between compressed cotton and uncompressed cotton?

Mr. LOVERING. Why should they not, under your theory?

Mr. WALKER. They ought to, under that theory. My theory would correct the inequalities of that thing.

Mr. ESCH. Does the steamship company have the same right to make a rebate in its territory around San Francisco as you have in the country around New York?

Mr. WALKER. They could make the rates that way if they chose to.

Mr. ESCH. How much do they exercise that right?

Mr. WALKER. They do not do it at all.

Mr. ESCH. Your wine all originates in San Francisco?

Mr. WALKER. Yes, sir. It either is there or shippers bring it in themselves. The rate, 20 per cent lower than the transcontinental rate, makes it 60 cents. Pacific Mail Steamship Company make it 55 cents, which gives the wine 5 cents to get in from somewhere near by, or something of that sort.

Mr. LOVERING. Have you any reason to believe that the business of the Panama Railroad will be of any considerable proportions—will continue to be—after the canal is constructed or operated?

Mr. WALKER. My feeling is that the road will do a great deal more business than it does now. My feeling has always been that it is likely to be turned into an electric traction road.

Mr. LOVERING. Will you not please state why?

Mr. WALKER. Because I think that the building of the canal on the Isthmus is going to develop the country, and with the development the populace there will require facilities for getting about and moving freight, and that the local tariff will keep up the road. And of course among the local traffic I should consider the passengers who go there in steamers, going through, and who will prefer to travel across the Isthmus by rail instead of staying on the steamer. After a three weeks' voyage on a vessel I think almost anyone would like to take a little trip on shore, and they could go across the Isthmus in an hour and wait there and see Panama, which is an interesting old town, and get on the steamer when it came along.

Mr. ADAMSON. Do you not think it will be necessary for the railroad to do all of the local freight business?

Mr. WALKER. Yes, sir; I think so. I do not imagine that the business—the local business—will be allowed on the canal at all. It would interfere with the navigation of the canal.

Mr. LOVERING. Will there not be a great deal of freight come to Colon that will break bulk at that point?

Mr. WALKER. I do not know what to think about that. The canal is likely to change the whole course of business absolutely. I was trying to get some statistics a few years ago as to what volume of traffic was likely to seek the canal from the United States, from the gulf ports, and the eastern ports, and where it would be distributed, how much of the business which now comes out through Memphis and the other gateways of the South to the Pacific coast and thence to China and Japan could be diverted down that way, and in the search for matter I went to a statistician who placed before me figures made some twenty years before, and they stated that there was at that time a great deal of business in Chile that took sailing vessels. It never could go to the Isthmus, because of the lack of wind in the neighborhood of Panama, and the traffic could not afford to pay steamer freights. I was then hauling that class of freight from down there by steamer at the rate of 40,000 tons in the year—sugar. Twenty years ahead a man can not tell what will happen. Here were steamers so constructed that they could carry the freight profitably at lower rates than sailing vessels were ready to take it at twenty years before.

It seems to me that lines which now distribute traffic all along in the West Indies may continue just that kind of business, and I think the Royal Mail Steamship Company, for instance, running from Southampton to the West Indies, if they found 100 tons of freight they could take out and land at Colon, would do it. And they might find some freight running up and down to Valparaiso, and they would take that, and then there might be other lines established from New York down to Valparaiso, and other lines that would go up to San Francisco, and it seems to me that is the natural way that business would change. The canal will make all-water transportation.

Now, I would like to say some few words on my own account, if I may be permitted to do so.

The CHAIRMAN. Certainly.

Mr. WALKER. This is on the subject of the steamship line, and its value to the railroad, and the necessity for an office in New York, if the steamship line is to run.

During the year 1904 the tonnage moved by the Panama Railroad Company was, in round numbers, 409,000 tons. Of this, 326,000 tons was through traffic, and our steamship line carried 48 per cent of it—156,000 tons. The traffic between New York and San Francisco in both directions was 69,565 tons. In 1897 the total traffic was only 290,651 tons; the through traffic was 241,044 tons. The steamship line had 35½ per cent of it, making 85,186 tons; and business between New York and San Francisco was 43,864 tons. This growth I consider the direct result of the dominating policy which the steamship line enables the railroad to maintain, with a terminal in New York. To operate the railroad as a mere link between Colon and Panama, however low the rate for the transit, would be giving up all control of through rates and the movement of cargo from the Isthmus. When cargo is landed on one side of the Isthmus, steamers are not necessarily waiting to receive it on the other side. Some lines from Colon to Europe touch there but once a month, and at times these, and others with more frequent sailings, are unable to move accumulations, having filled space at previous ports of call. After years of controversy, we finally secured the adoption by all lines operating via the Isthmus of a uniform bill of lading which gives us the right to divert cargo from the consigned line if not taken forward by the first steamer scheduled to sail after the cargo is ready for forwarding. There are eight lines to Europe which touch at Colon. Seven of these in recent years have joined in a conference covering their terminal ports, Liverpool, London, Havre, Antwerp, Southampton, Hamburg, Barcelona, Bordeaux, Marseille, Genoa, and territory contiguous to each for the purpose of placing all the ports on an equality as to through rates, and respecting each other's territory. It is conceivable that any one of these lines would refuse to receive from us freight consigned to another, were it not that we can now ship to New York by our own line, and distribute thence all over Europe. The Atlantic lines fear the popularity of a route via New York, so that they watch the situation closely and put on extra steamers when necessary to keep our cars, wharves, and warehouses free. The through tariffs are agreed upon by all at interest, the through rates to and from different ports on the Pacific varying directly with the degree of competition, particularly competition by steamers via the Straits of Magellan. Each carrier via the Isthmus receives fixed percentages of the through rates, and the right is conceded to initial carriers to make special rates down to fixed minima, whenever the exigencies of the competition require immediate action. If the railroad fixes a set of arbitrary rates for the transit of the Isthmus, one of two contingencies would result:

First, if the figures make a fair division of the through rates to and from ports immediately north and south of Panama, they would be too high for business to and from the Pacific coast of the United States to the north, and Chile to the south, and those countries would be shut off from the benefits of the Isthmus route.

Second, if the figures are made low enough to attract business to and from the countries far from Panama, the through rates will not be affected, but the steamship companies will absorb the reduction. Such was the result when Mr. Charles de Lesseps inaugurated the policy for Central America in 1887, and it hampered the relations of

the railroad with the connections until we broke with the Pacific Mail in 1900. As a matter of fact the through business passing across the Isthmus between the Atlantic and Pacific ports of the United States is only 21 per cent of the entire through business. On the remaining four-fifths the freights are paid by the peoples of Mexico, Central America, and South America at competitive rates, and I fail to see why we, the citizens of the United States, should propose to tax ourselves for the benefit of our neighbors when we have a valuable property in the Panama railroad and steamship line which can be developed for the benefit of all at reasonable rates, and at the same time make earnings to offset some of the expenses which fall upon our country for canal construction. It has been suggested that the three steamers belonging to the Panama Railroad should be leased or sold, the purchaser to agree to maintain a line and carry Government freight and passengers between New York and Colon at specified reasonable rates. Furthermore, that if the United States went out of the ocean transportation business, active competition would result to the Isthmus and to San Francisco, and that foreign vessels would compete for the way freight. The comparatively low rates between New York and San Francisco now forced upon the Isthmus route would not be attractive to American capital, except for the hope of combining San Francisco tonnage with other better-paying freights. Two lines, or one interest on both sides of the Isthmus, would have to make reciprocal arrangements for exchanging traffic, probably excluding connection with any other line. Regular and close connection is essential to San Francisco merchants. They expect shipments to be not more than 36 days en route. Oils and wines are seriously damaged by delay in the hot, moist climate of the Isthmus.

The Panama Railroad, having relinquished all control on the ocean, would have no power to regulate through rates. With the present organization it is a simple matter to charter additional vessels on the Atlantic and on the Pacific, as we did in 1901, to have the power of absolute control. Our action at that time created a wholesome regard for us in all of our connections, and our views are now heard by them with due consideration. As we have the authority to make all through rates out of New York, and as the European conference lines have adopted the policy of making the same rates from Europe, our commanding position as the regulator of rates is apparent. My experience of thirty-two years in the railroad and steamship business has always been that railroads reaching the Atlantic coast south of New York needed to control steamship connections to that city as an outlet, and the Panama Railroad to Colon is no exception. It would be a great mistake to dispose of the steamers and lose the control for which the company's officers have striven so long.

As to the chartering of foreign vessels to carry Government freight to Colon, we have already chartered room at favorable rates on one or two steamers as may be necessary to carry a large shipment of bulky packages which could not be transported by any of our steamers or by the steamships of other American lines running to the West Indies. The business from Europe to Colon is done by steamers which make many other calls about the West Indies. If the Panama Railroad gives up its regular service, steamship owners might find business profitable with Colon only in a similar manner. The direct service heretofore has been profitable from its concentration on one

line. Herein has also lain the ability of the private line between Panama and San Francisco to obtain sufficient business to keep the steamers employed. Should several lines touch Colon, they would ultimately work in concert, as is done by the lines from Europe. The foreign steamers of the United Fruit Company from New Orleans, and the Leyland and the Harrison lines from Liverpool, take freight to Colon as an incident of their voyage to other ports for which outward freight is not obtainable, and where they secure more desirable homeward freight than can be had from Colon, where they load little or nothing. The result is an irregular and unsatisfactory passenger service to New Orleans by the United Fruit Company, sometimes of ten days' duration. They make the trip to Colon in five days, carry Government employees at half rate, making the charge the same as ours from New York, which is one-third of our regular rate. I am confident that such a reduction by the United Fruit Company would not have been made except to keep pace with us. We encouraged the United Fruit Company to run to Colon, and gave them the benefit of all the arrangements for through freights that the Panama Railroad Company enjoys, with connections beyond Panama, and I think the future policy should be to give other lines that may be desirous of the railroad connection equal facilities, without, however, giving up the controlling influence to be exercised by the company's steamship line.

If the steamships are retained in service, it follows naturally that a wharf and office must be maintained in New York, where 48 per cent of the railroad's through traffic originates or is delivered to consignees, and where freights are prepaid and collected, except on those goods shipped to San Francisco, freight to be collected at destination. All freight to way ports is prepaid. If any office is maintained in the money center, and equidistant by the mails for accounting from San Francisco, Europe, and the Isthmus.

Mr. MANN. Can any of you gentlemen tell me if you have in these hearings gone into the question of how you collect freights?

Mr. WALKER. I have not heard anyone say a word about that.

Mr. MANN. How do you do that?

Mr. WALKER. We collect the freight from the shipper in New York when we deliver a bill of lading.

Mr. MANN. That is easy enough, of course, on freight originating or terminating in New York, but how about the other?

Mr. WALKER. In Europe our connections collect the entire freight from the shipper or consignee, not allowing anybody on the Pacific coast to handle the money of the companies, except as to passage money. The only exception is San Francisco. The European lines have arranged to send freight to San Francisco "collect," when it is desired.

Mr. MANN. Is any of the through rate, in any event, collected on the Isthmus?

Mr. WALKER. Not as a rule. There have been exceptions, when we knew a man, and for some particular reason I have asked our superintendent to get the money from him. It is done on the Isthmus now for employees of the Commission.

Mr. MANN. I mean on through freights?

Mr. WALKER. Oh, no; not a dollar of through freight is ever settled on the Isthmus.

Mr. MANN. Not a dollar is settled there. It is all collected through the New York office?

Mr. WALKER. Yes, sir; the whole business of accounting and adjustment. Freights coming from the south of Panama to New York are collected by us at New York, and the proportion belonging to the carriers south is paid to their agents in New York.

Mr. MANN. If you had an office on the Isthmus, and attempted to collect freight there, you would have to collect it in the same manner as you do now in New York, except that it would be that much farther away?

Mr. WALKER. That much farther away from the center of the money transaction.

Mr. MANN. The fact that the freight goes through there would not make it any nearer, so far as the collection of money is concerned?

Mr. WALKER. No, sir; you have got to have an office somewhere. We are doing business with half the globe, 3,000 miles from San Francisco, and about 3,000 miles the other way, and New York is as central as any place you can get.

Mr. MANN. Mr. Drake, will you have a copy of the minutes of the meetings of the board of directors since the members of the Isthmian Canal Commission became members of the board made for us? If we should want a copy of the minutes of the executive committee for some time we will ask for it. The minutes of the board of directors are not very long, and I would like to have a copy of them.

Mr. DRAKE. Yes, sir; I will furnish a copy.

Mr. MANN. Will you send me tariffs?

Mr. WALKER. If you will tell me what tariffs you would like to have, I will get them together and send you all you want.

Mr. MANN. Your published tariffs?

Mr. WALKER. We have a great many. This book is full of them [indicating scrap book]. It is a most complex thing.

Mr. MANN. Why do you not make a tariff so that if a man wants to find out something, he will not have to look it all up?

Mr. WALKER. We do. If a man comes into the office for a tariff on freight to San Francisco, we give it to him. There is no use in giving him the tariff on freight to South America, because he does not want that.

Mr. MANN. What I want is the tariffs on transcontinental business. There is no use in having the tariffs to Europe and South America.

(Thereupon the committee adjourned.)

EXTRACTS FROM ANNUAL REPORTS OF THE PANAMA RAILROAD COMPANY.

[Extracts from the report of the Panama Railroad Company, 1877.]

Statement showing number of passengers transported over the Panama Railroad for the years 1876 and 1877.

	1876.				1877.			
	To Panama.		To Aspinwall.		To Panama.		To Aspinwall.	
	Through.	Way.	Through.	Way.	Through.	Way.	Through.	Way.
January.....	496	458	268	471	405	479	186	481
February.....	560	546	181	528	412	582	211	468
March.....	600	682	432	646	385	636	279	556
April.....	406	769	272	772	486	678	300	558
May.....	615	729	579	704	367	627	524	516
June.....	384	736	383	838	383	665	211	590
July.....	563	610	207	687	317	556	325	518
August.....	304	452	363	463	425	634	242	625
September.....	698	373	298	386	447	631	188	602
October.....	485	463	304	447	348	715	242	629
November.....	592	275	200	261	365	642	154	509
December.....	458	484	184	433	331	810	159	767
Total.....	6,161	6,477	3,671	6,631	4,671	7,605	3,021	6,813

B. MOZLEY,
General Superintendent.

Statement of earnings and expenses for the year ending December 31, 1877.

EARNINGS.

Freight:		
From Aspinwall to Panama.....	\$763,580.38	
From Panama to Aspinwall.....	712,768.44	
Treasure.....	15,957.51	
Mail.....	14,888.90	
Gross freight earnings.....		\$1,507,195.23
Passengers:		
From Aspinwall to Panama.....	99,961.35	
From Panama to Aspinwall.....	67,742.90	
Gross passenger earnings.....		167,704.25
Miscellaneous receipts:		
Interest and exchange.....	83,504.30	
Lighterage.....	130,667.92	
Water from Taboga and water at Aspinwall.....	32,625.93	
Leases and rents, ballast, wharfage, light dues, telegraph, etc.....	66,433.18	
		313,231.33
Total gross earnings.....		1,988,130.81

EXPENSES.

Interest on bonds.....	\$209,468.19	
Subsidy to Colombian Government.....	250,000.00	
Total expenses on the Isthmus, for lighterage, salaries, fuel, supplies, repairs, etc..	\$401,461.68	
Charges account.....	19,021.73	
Drawback off Colombian produce.....	12,500.07	
Lost and damaged freight.....	6,562.65	
Freight on stores.....	2,863.98	
Office expenses in New York.....	14,569.14	
	<u>456,979.25</u>	
		\$916,447.44
Net earnings.....		1,071,683.37

NOTE.—Previously the lighterage account has been kept separately, and only the net profits have been included in the reports. In the above statement the gross receipts of lighterage appear in the earnings, and the gross expenses per contra, thus accounting for an apparent increase in operating expenses.

Treasurer's statement, December 31, 1877.

ASSETS.

Cash in bank.....	\$42,823.46
Funds in England.....	47,120.00
Due from connecting lines.....	284,594.66
Bills receivable.....	300,781.25
Colombian Government—advance of subsidy.....	263,538.00
Due from sinking fund.....	56,267.30
Investment in Panama Railroad Company stock, 900 shares.....	112,500.00
Petty cash.....	90.94
Interest due.....	4,083.33
	<u>1,111,798.94</u>

LIABILITIES.

Loans.....	\$150,000.00
Drawbacks on Colombian produce.....	3,500.00
Isthmus drafts.....	7,149.06
	<u>160,649.06</u>
Surplus.....	951,149.88

SINKING FUND.

DECEMBER 31, 1877.

The bonded indebtedness of the company consists of 2,989 7 per cent sterling bonds of £200 each, equal to £597,800 (about \$2,905,308), all due in 1897, to meet which the company have the following sinking fund:

195 Panama 7 per cent sterling bonds, cost.....	\$178,255.01	Due to Panama Railroad Company.....	\$56,267.30
Panama stock, 1,500 shares, cost.....	153,690.37	Sinking fund.....	675,678.08
Six Pacific mail steamers...	400,000.00		
	<u>731,945.38</u>		<u>731,945.38</u>

[Extracts from Report of Panama Railroad Company for 1878.]

Secretary's statement of earnings and expenses for the year ending December 31, 1878.

EARNINGS.

Freight:		
From Aspinwall to Panama	\$889,722.10	
From Panama to Aspinwall	690,957.97	
On treasure	16,130.30	
For mails	12,749.55	
Gross freight earnings		\$1,609,559.92
Passengers:		
From Aspinwall to Panama	81,894.28	
From Panama to Aspinwall	68,248.55	
		150,142.83
Gross passenger and freight earnings		1,759,702.75
Miscellaneous receipts:		
Interest and exchange	129,764.21	
Lighterage	129,273.42	
Water from Taboga and water at Aspinwall	29,613.54	
Leases and rents, ballast, wharfage, light dues, telegraph, etc	66,505.42	
		355,156.59
Total gross earnings		2,114,859.34

EXPENSES.

Interest on bonds	\$239,889.02	
Subsidy to Colombian Government	250,000.00	
Total expenses on the Isthmus for lighterage, salaries, fuel, supplies, repairs, etc	496,932.65	
Charges account	13,212.92	
Drawback on Colombian produce	12,932.62	
Lost and damaged freight	3,243.64	
Freight on stores	2,866.91	
Office expenses in New York	16,155.52	
		1,035,233.28
Net earnings		1,079,626.06

NOTE.—The above item of "Total expenses on the Isthmus" includes \$58,886.88 spent for new cars, and \$43,905.75 for 1,000 tons of steel rails.

Treasurer's statement, December 31, 1878.

ASSETS.

Cash in bank	\$54,084.22
Funds in England	47,118.93
Due from connecting lines	640,963.95
Bills receivable	135,449.25
Colombian Government for advance of subsidy	47,852.82
Due from sinking fund	7,863.46
Investment in Panama stock, 900 shares	112,500.00
Loans on call	115,000.00
Petty cash	110.46
Interest due	28,403.29
	1,195,346.38

LIABILITIES.

Drawbacks on Colombian produce.....	\$1, 506. 49	
Isthmus drafts	3, 063. 95	
		<u>\$4, 570. 44</u>

Surplus..... 1, 190, 775. 94

Besides the above, this company hold steamship property transferred to it February 1, 1878, by the Pacific Mail Steamship Company, for which this company issued sterling bonds amounting to £200,000, say..... 1, 000, 000. 00

SINKING FUND.

DECEMBER 31, 1878.

The bonded indebtedness of the company consists of 3,989 seven per cent sterling bonds of £200 each, equal to £797, 800 (about \$3,877,308), of which the first 2,969 are due in 1897, and the remaining 1,000 (issued February 1, 1878), in ten half-yearly payments of 100 bonds each, beginning on October 10, 1884, and ending on April 10, 1889.

To meet this bonded indebtedness the company have the following sinking fund:

195 Panama 7 per cent sterling bonds, cost	\$178, 255. 01	Due to Panama Railroad Company	\$7, 863. 46
Panama stock, 1,500 shares, cost	153, 690. 37	Sinking fund.....	724, 081. 92
6 Pacific Mail steamers	400, 000. 00		
	<u>731, 945. 38</u>		<u>731, 945. 38</u>

[Extracts from Report of Panama Railroad Company for 1879.]

Statement of earnings and expenses for the year ending December 31, 1879.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight.....	\$796, 403. 63	
From treasure	3, 151. 04	
From mails	8, 581. 15	
From passengers	75, 704. 46	
		<u>\$883, 840. 28</u>

Panama to Aspinwall—

From freight.....	735, 250. 30	
From treasure	16, 877. 52	
From mails	3, 788. 47	
From passengers	67, 005. 34	
		<u>822, 921. 63</u>

1, 706, 761. 91

Miscellaneous receipts:

Interest and exchange.....	173, 321. 30	
Ligherage	132, 755. 35	
Water supplied shipping.....	27, 391. 29	
Rental of property, ballast, wharfage, light dues, telegraph, etc	81, 071. 25	
Old rails taken up and shipped to New York prior to December 31, 1879.....	35, 066. 32	
		<u>449, 605. 51</u>

Total earnings 2, 156, 367. 42

EXPENSES.

Operating expenses on the Isthmus ^a	\$463, 168. 91
Lost and damaged freight.....	997. 23
New York office expenses.....	16, 246. 93
Miscellaneous expenses in New York.....	24, 204. 52
Total operating expenses	504, 617. 59
Subsidy to United States of Colombia.....	250, 000. 00
Drawback on Colombian produce	9, 939. 27
Interest on bonds	270, 853. 10
	<u>\$1, 035, 409. 96</u>
Net earnings.....	1, 120, 957. 46
Dividends paid during the year.....	910, 000. 00

E. Z. PENFIELD, *Accountant.**Treasurer's statement.*

DECEMBER 31, 1879.

ASSETS.	
Cash-in bank.....	\$10, 400. 27
Cash in London.....	17, 234. 19
Due from connecting steamship lines.....	542, 938. 52
Notes receivable	4, 165. 00
United States of Colombia, for advance of subsidy.....	58, 250. 00
900 shares Panama stock (cost).....	122, 564. 97
Loans on demand	753, 000. 00
Petty cash.....	157. 17
Accrued interest on loans.....	4, 818. 03
	<u>1, 511, 528. 15</u>

LIABILITIES.	
Drafts advised.....	\$4, 520. 00
Due sinking fund.....	38, 877. 03
Unpaid bills.....	6, 208. 14
Accrued interest on bonds	60, 189. 58
	<u>\$109, 794. 75</u>

Surplus.....	1, 401, 733. 40
Surplus December 31, 1878.....	1, 190, 775. 94

Increase for the year.....	210, 957. 46
Besides the above, the company holds steamship property transferred to it 1st February, 1878, by the Pacific Mail Steamship Company, for which this company issued sterling bonds amounting to £200,000, say.....	1, 000, 000. 00

W. J. EMMET, *Treasurer.**Sinking fund.*

DECEMBER 31, 1879.

The bonded indebtedness of the company consists of 3,989 seven per cent sterling bonds of £200 each, equal to £797,800 (say \$3,989,000) of which the first 2,989 are due in 1897, and the remaining 1,000, issued February 1, 1878, in ten half-yearly payments of 100 bonds each, beginning on 10th of October, 1884, and ending on 10th April, 1889.

To meet this bonded indebtedness the company has the following sinking fund:

195 Panama 7 per cent sterling bonds (cost).....	\$178, 255. 01
1, 500 shares Panama stock (cost).....	153, 690. 37
6 Pacific mail steamers.....	400, 000. 00
Due from Panama Railroad Company.....	38, 877. 03
	<u>770, 822. 41</u>

W. J. EMMET, *Secretary.*^a Includes \$33,132.43 spent for 1,000 tons steel rails.

202 INVESTIGATION OF PANAMA RAILWAY COMPANY.

[Extracts from the report of the Panama Railroad Company for 1880.]

Statement of earnings and expenses for the year ending December 31, 1880.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight.....	\$788,681.49	
From treasure.....	1,167.26	
From mails.....	8,470.89	
From passengers.....	70,900.03	
		\$869,219.67

Panama to Aspinwall—

From freight.....	700,529.50	
From treasure.....	12,021.85	
From mails.....	3,543.71	
From passengers.....	77,278.04	
		793,373.10

1,662,592.77

Miscellaneous receipts:

Interest and exchange.....	171,357.89	
Discount of subsidy.....	166,666.66	
Lighterage.....	149,487.51	
Water supplied shipping.....	34,697.50	
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	92,871.78	
		615,081.34

Total earnings 2,277,674.11

EXPENSES.

Operating expenses on the Isthmus ^a	608,274.38	
Lost and damaged freight.....	8,665.52	
New York office expenses.....	16,189.12	
Miscellaneous expenses in New York.....	14,833.43	
Subsidy to United States of Colombia.....	250,000.00	
Drawback on Colombian produce.....	6,706.57	
Interest on bonds.....	270,746.70	
		1,175,415.72

Net earnings 1,102,258.39

E. Z. PENFIELD, *Accountant.*

Treasurer's statement.

DECEMBER 31, 1880.

ASSETS.

Cash in bank, New York.....	\$27,061.93
Cash in bank, London.....	89,165.78
Cash in hands of agents.....	16,408.34
Due from connecting steamship lines.....	358,638.50
Notes receivable.....	5,673.75
United States of Colombia, for advance of subsidy.....	3,000,000.00
900 shares Panama stock, cost.....	122,564.97
600 six per cent Panama subsidy bonds.....	600,000.00
Loans on demand.....	346,000.00
Petty cash.....	34.03
Accrued interest on loans.....	2,230.00
	4,567,777.30

^aIncludes \$52,740.05 for new equipment, \$50,337.26 for 1,500 tons steel rails, and \$49,354.89 for rebuilding bridge across Chagres.

LIABILITIES.

Drafts advised	\$1, 440. 00	
Due sinking fund.....	90, 117. 53	
Unpaid bills	2, 038. 40	
Accrued interest on bonds	90, 189. 58	
Six per cent subsidy bonds	3, 000, 000. 00	
		<u>\$3, 183, 785. 51</u>
		1, 383, 991. 79

Besides the above, the company holds steamship property transferred to it February 1, 1878, by the Pacific Mail Steamship Company, for which this company issued sterling bonds amounting to £200,000, say

1, 000, 000. 00

Surplus December 31, 1879.....	1, 401, 733. 40
Earnings for 1880	1, 102, 258. 39
	<u>2, 503, 991. 79</u>
Dividends paid 1880.....	1, 120, 000. 00

Surplus December 31, 1880..... 1, 383, 991. 79

W. J. EMMET, *Treasurer.*

BONDED INDEBTEDNESS AND SINKING FUNDS.

DECEMBER 31, 1880.

The bonded indebtedness of the company consists of:

First. 3,989 seven per cent sterling bonds of £200 each, amounting to £797,800 (say \$3,989,000), of which the first 2,989 were issued October 10, 1867, and fall due October 10, 1897, and the remaining 1,000 were issued February 1, 1878, and fall due in ten half-yearly payments of 100 bonds each, beginning October 10, 1884, and ending April 10, 1889.

To meet this bonded indebtedness the company has the following sinking fund:

195 Panama 7 per cent sterling bonds, cost.....	\$178, 255. 01
1,500 shares Panama stock, cost	153, 690. 37
Six Pacific mail steamers	400, 000. 00
Due from Panama Railroad Company.....	90, 117. 53

822, 062. 91

Second. 3,000 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$3,000,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy has been pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest, and, second, as a cumulative sinking fund for the redemption of the principal; the first 600 bonds (which belong to the company) to be first redeemed, exhausting the sinking fund to November, 1890, and thereafter the bonds from 601 to 3,000 to be drawn yearly in September to an amount equal to the then surplus of the sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

W. J. EMMET, *Secretary.*

[Extracts from Report of the Panama Railroad Company for 1881.]

Statement of earnings and expenses for the year ending December 31, 1881.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight	\$1, 000, 406. 57
From treasure	2, 534. 38
From mails	8, 252. 28
From passengers	113, 300. 14
	<u>\$1, 124, 493. 37</u>

Earnings of the road—Continued.

Panama to Aspinwall—

From freight	\$746, 444. 32	
From treasure	10, 714. 35	
From mails	3, 506. 49	
From passengers	87, 448. 18	
		<u>\$848, 113. 34</u>
		1, 972, 606. 71

Miscellaneous receipts:

Interest and exchange	94, 548. 29	
Ligherage	147, 349. 69	
Water supplied shipping	33, 731. 81	
Rental of property, ballast, wharfage, light dues, telegraph, etc	123, 133. 13	
		<u>398, 762. 92</u>

Total earnings 2, 371, 369. 63

EXPENSES.

Operating expenses on the Isthmus	\$478, 294. 25	
Lost and damaged freight	6, 851. 59	
New York office expenses	21, 203. 40	
Miscellaneous expenses in New York	17, 243. 51	
		<u>523, 592. 75</u>
Subsidy to United States of Colombia	10, 000. 00	
Subsidy to State of Panama	25, 000. 00	
Redemption of subsidy bonds	45, 000. 00	
Interest on subsidy bonds	180, 000. 00	
Interest on sterling bonds	270, 603. 90	
Drawback on Colombian produce	10, 766. 95	
		<u>1, 064, 963. 60</u>
Net earnings		1, 306, 406. 03

E. Z. PENFIELD, *Secretary.*

Treasurer's statement.

DECEMBER 31, 1881.

ASSETS.

Cash in bank, New York	\$434, 555. 99	
Cash in bank, London	7, 138. 76	
Cash in hands of agents	30, 164. 50	
Due from connecting steamship lines	246, 492. 39	
Note receivable	4, 939. 47	
United States of Colombia, for advance of subsidy	2, 955, 000. 00	
Loans on demand	369, 000. 00	
Petty cash	38. 99	
		<u>4, 047, 330. 10</u>

LIABILITIES.

Drafts advised	\$1, 345. 00	
Due sinking fund	385, 714. 66	
Unpaid bills	9, 182. 45	
Accrued interest on bonds	89, 681. 96	
Six per cent subsidy bonds	2, 955, 000. 00	
		<u>3, 440, 924. 07</u>
		606, 406. 03

The company's surplus assets June 30, 1881, were sold
for 1, 698, 200. 00
Earnings for 1881 1, 306, 406. 03

..... 3, 004, 606. 03
Dividends paid, 1881 2, 398, 200. 00

Surplus, December 31, 1881 606, 406. 03

E. Z. PENFIELD, *Treasurer.*

BONDED INDEBTEDNESS AND SINKING FUNDS.

DECEMBER 31, 1881.

The bonded indebtedness of the company consists of:

First. 3,989 seven per cent sterling bonds of £200 each, amounting to £797,800 (say \$3,989,000), of which the first 2,989 were issued October 10, 1867, and fall due October 10, 1897, and the remaining 1,000 were issued February 1, 1878, and fall due in ten half-yearly payments of 100 bonds each, beginning October 10, 1884, and ending April 10, 1889.

To meet this bonded indebtedness the company has the following sinking fund:

195 Panama 7 per cent sterling bonds cost.....	\$178,255.01
555 Panama 6 per cent subsidy bonds cost.....	555,000.00
Due from Panama Railroad Company.....	385,714.66
	<hr/>
	1,118,969.67

Second. 2,955 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,955,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, 1st, to the payment of the interest, and, 2d, as a cumulative sinking fund for the redemption of the principal, the first 555 of outstanding bonds (which belong to the company's sinking fund) to be first redeemed, exhausting the subsidy sinking fund to November, 1890, and thereafter the bonds from 601 to 3000 to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

E. Z. PENFIELD, *Secretary.*

[Extracts from report of the Panama Railroad Company for 1882.]

Statement of earnings and expenses for the year ending December 31, 1882.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight.....	\$1,109,487.06
From treasure.....	2,638.62
From mails.....	9,549.46
From passengers.....	118,411.83
	<hr/>
	\$1,240,086.97

Panama to Aspinwall—

From freight.....	736,271.66
From treasure.....	10,998.03
From mails.....	3,536.92
From passengers.....	105,740.28
	<hr/>
	856,546.89
	<hr/>
	2,096,633.86

Miscellaneous receipts:

Interest and exchange.....	52,995.73
Lighterage.....	156,968.81
Water supplied shipping.....	39,432.00
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	108,315.40
	<hr/>
	357,711.94

Total earnings..... 2,454,345.80

EXPENSES.

Operating expenses on the Isthmus.....	\$730,764.42
Lost and damaged freight.....	4,352.04
New York office expenses.....	20,296.33
Miscellaneous expenses in New York.....	16,548.09
	<hr/>
	771,960.88
Franchise tax to State of New York.....	59,955.00
Subsidy to United States of Colombia.....	10,000.00
Subsidy to State of Panama.....	25,000.00
Redemption of subsidy bonds.....	47,000.00
Interest on subsidy bonds.....	177,300.00
Interest on sterling bonds.....	271,048.82
Drawback on Colombian produce.....	9,545.81
	<hr/>
	\$1,371,810.51

Net earnings..... 1,082,535.29

E. Z. PENFIELD, *Secretary.*

Treasurer's statement.

DECEMBER 30, 1882.

ASSETS.

Cash in bank, New York.....	\$19,147.95
Cash in bank, London.....	22,386.81
Cash in hands of agents.....	20,260.04
Due from connecting steamship lines.....	272,600.35
Note receivable.....	125.00
United States of Colombia, for advance of subsidy.....	2,908,000.00
Loans on demand.....	1,084,182.50
Petty cash.....	226.43
	<hr/>
	4,326,929.08

LIABILITIES.

Drafts advised.....	\$4,305.00
Due sinking fund.....	503,443.29
Unpaid bills.....	7,969.89
Accrued interest on bonds.....	89,269.58
Six per cent subsidy bonds.....	2,908,000.00
	<hr/>
	3,512,987.76
	<hr/>
	813,941.32

Surplus, December 31, 1881..... 606,406.03

Earnings for 1882..... 1,082,535.29

Dividends paid 1882, 12½ per cent..... 1,688,941.32

..... 875,000.00

Surplus December 30, 1882..... 813,941.32

E. Z. PENFIELD, *Treasurer.*

BONDED INDEBTEDNESS AND SINKING FUND.

DECEMBER 30, 1882.

The bonded indebtedness of the company consists of:

First, 3,989 seven per cent sterling bonds of £200 each, amounting to £797,800 (say, \$3,989,000), of which the first 2,989 were issued October 10, 1867, and fall due October 10, 1897, and the remaining 1,000 were issued February 1, 1878, and fall due in ten half-yearly payments of 100 bonds each, beginning October 10, 1884, and ending April 10, 1889.

To meet this bonded indebtedness the company has the following sinking fund:

195 Panama 7 per cent sterling bonds, cost.....	\$178,255.01
508 Panama 6 per cent subsidy bonds, cost.....	508,000.00
Due from Panama Railroad Company.....	503,443.29
	<hr/>
	1,189,698.30

Second. 2,908 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,908,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest, and second, as a cumulative sinking fund for the redemption of the principal; the first 508 of outstanding bonds (which belong to the company's sinking fund) to be first redeemed, exhausting the subsidy sinking fund to November, 1890, and thereafter the bonds from 601 to 3,000 to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

E. Z. PENFIELD, *Secretary.*

[Extracts from Report of the Panama Railroad Company for 1883.]

Statement of earnings and expenses for the year ending December 31, 1883.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight.....	\$1, 368, 233. 11	
From treasure.....	2, 363. 69	
From mails.....	9, 159. 40	
From passengers.....	188, 812. 79	
		\$1, 568, 568. 99

Panama to Aspinwall—

From freight.....	683, 459. 86	
From treasure.....	7, 037. 84	
From mails.....	2, 919. 53	
From passengers.....	161, 852. 20	
		855, 269. 43
		2, 423, 838. 42

Miscellaneous receipts:

Interest and exchange.....	56, 872. 61	
Ligherage.....	145, 459. 79	
Water supplied shipping.....	35, 206. 04	
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	150, 607. 06	
		388, 145. 50

Total earnings..... 2, 811, 983. 92

EXPENSES.

Operating expenses on the Isthmus.....	\$1, 002, 456. 22	
Lost and damaged freight.....	58, 283. 80	
New York office expenses.....	21, 031. 99	
Miscellaneous expenses in New York.....	17, 767. 71	
		1, 099, 539. 72
Franchise tax to State of New York.....	21, 875. 00	
Subsidy to United States of Colombia.....	10, 000. 00	
Subsidy to State of Panama.....	25, 000. 00	
Redemption of subsidy bonds.....	51, 000. 00	
Interest on subsidy bonds.....	174, 480. 00	
Interest on sterling bonds.....	270, 853. 10	
Drawback on Colombian produce.....	7, 444. 43	
		1, 660, 192. 25
Net earnings.....		1, 151, 791. 67

E. Z. PENFIELD, *Secretary.*

Treasurer's statement.

DECEMBER 31, 1883.

ASSETS.

Cash in bank, New York	\$568,554.91
Cash in bank, London	80,851.34
Cash in hands of agents	38,373.46
Due from connecting steamship lines	257,103.04
Note receivable	15,000.00
United States of Colombia, for advance of subsidy	2,857,000.00
Loans on demand	435,000.00
Petty cash	207.48
	<hr/>
	4,248,090.23

LIABILITIES.

Drafts advised	\$4,319.05
Due sinking fund	274,623.63
Unpaid bills	2,654.98
Accrued interest on bonds	88,759.58
Six per cent subsidy bonds	2,857,000.00
	<hr/>
	3,227,357.24
	<hr/>
	1,020,732.99
Surplus December 30, 1882	813,941.32
Earnings for 1883	1,151,791.67
	<hr/>
	1,965,732.99
Ninety-fourth and ninety-fifth dividends paid 1883, 13½ percent	945,000.00
	<hr/>
Surplus December 31, 1883	1,020,732.99

E. Z. PENFIELD, *Treasurer.*

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUNDS.

DECEMBER 31, 1883.

The bonded indebtedness of the company consists of:

First, 3,989 seven per cent sterling bonds of £200 each, amounting to £797,800 (say \$3,989,000), of which the first 2,989 were issued October 10, 1867, and fall due October 10, 1897, and the remaining 1,000 were issued February 1, 1878, and fall due in ten half-yearly payments of 100 bonds each, beginning October 10, 1884, and ending April 10, 1889.

To meet this bonded indebtedness the company has the following sinking fund:

195 Panama 7 per cent sterling bonds, cost	\$178,255.01
792 Panama 6 per cent subsidy bonds, cost	813,999.34
Due from Panama Railroad Company	274,623.63
	<hr/>
	1,266,877.98

Second, 2,857 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,857,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest, and second, as a cumulative sinking fund for the redemption of the principal; the first 457 of outstanding bonds (which belong to the company's sinking fund) to be first redeemed, exhausting the subsidy sinking fund to November, 1890, and thereafter the bonds from 601 to 3,000 to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

E. Z. PENFIELD, *Secretary.*

[Extracts from report of the Panama Railroad Company for 1884.]

Statement of earnings and expenses for the year ending December 31, 1884.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight.....	\$1, 826, 554. 55	
From treasure.....	4, 301. 06	
From mails.....	10, 720. 07	
From passengers.....	251, 820. 12	
		\$2, 093, 395. 80

Panama to Aspinwall—

From freight.....	866, 524. 57	
From treasure.....	7, 621. 93	
From mails.....	3, 521. 29	
From passengers.....	191, 266. 62	
		1, 068, 934. 41

3, 162, 330. 21

Miscellaneous receipts:

Interest.....	6, 695. 81	
Lighterage.....	146, 221. 96	
Water supplied shipping.....	36, 580. 25	
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	142, 947. 92	
		332, 445. 94

Total earnings..... 3, 494, 776. 15

EXPENSES.

Operating expenses on the Isthmus.....	1, 689, 797. 70
Lost and damaged freight.....	11, 127. 03
New York office expenses.....	24, 801. 78
Miscellaneous expenses in New York.....	17, 650. 05

1, 743, 376. 56

Franchise tax to State of New York.....	23, 625. 00
Subsidy to United States of Colombia.....	10, 000. 00
Subsidy to State of Panama.....	25, 000. 00
Redemption of subsidy bonds.....	53, 000. 00
Interest on subsidy bonds.....	171, 420. 00
Interest on sterling bonds.....	271, 107. 62
Drawback on Colombian produce.....	8, 703. 40
Exchange.....	12, 719. 90

2, 318, 952. 48

Net earnings..... 1, 175, 823. 67

E. Z. PENFIELD, *Secretary.**Treasurer's statement.*

DECEMBER 31, 1884.

ASSETS.

Cash in bank, New York.....	\$568, 412. 49
Cash in hands of agents.....	79, 188. 86
Due from connecting steamship lines.....	308, 138. 21
Note receivable.....	131. 25
United States of Colombia for advance of subsidy.....	2, 804, 000. 00
Loans on demand.....	560, 000. 00
Petty cash.....	109. 11

4, 319, 979. 92

LIABILITIES.

Drafts against London bankers in excess of letter advice of deposits	\$55,282.45	
Isthmus drafts advised	5,719.81	
Due sinking fund	272,143.40	
Unpaid bills	18,048.02	
Accrued interest on bonds	88,229.58	
Six per cent subsidy bonds	2,804,000.00	
		<hr/> \$3,243,423.26
		1,076,556.66
Surplus December 31, 1883	1,020,732.99	
Earnings for 1884	1,175,823.67	
		<hr/> 2,196,556.66
Ninety-sixth and ninety-seventh dividends paid 1884, 16 per cent	1,120,000.00	
		<hr/> 1,076,556.66

E. Z. PENFIELD, *Treasurer*.

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUNDS.

DECEMBER 31, 1884.

The bonded indebtedness of the company consists of:

First. 3,889 seven per cent sterling bonds of £200 each, amounting to £777,800 (say \$3,889,000), of which the first 2,989 were issued October 10, 1867, and fall due October 10, 1897, and the remaining 900 were issued February 1, 1878, and fall due in nine half-yearly payments of 100 bonds each, beginning April 10, 1885, and ending April 10, 1889.

To meet this bonded indebtedness the company has the following sinking fund:

195 Panama 7 per cent sterling bonds, cost	\$178,255.01
774 Panama 6 per cent subsidy bonds, cost	798,150.83
Due from Panama Railroad Company	272,143.40
	<hr/> 1,248,549.24

Second. 2,804 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,804,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908; the same to be applied by the company, first, to the payment of the interest, and, second, as a cumulative sinking fund, for the redemption of the principal; the first 404 of outstanding bonds (which belong to the company's sinking fund) to be first redeemed, exhausting the subsidy sinking fund to November, 1890, and thereafter the bonds from 601 to 3,000 to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

E. Z. PENFIELD, *Secretary*.

[Extracts from report of the Panama Railroad Company for 1885.]

Statement of earnings and expenses for the year ending December 31, 1885.

EARNINGS.

Earnings of the road:	
Aspinwall to Panama—	
From freight	\$1,728,798.57
From treasure	4,040.25
From mails	16,198.60
From passengers	197,268.64
	<hr/> \$1,946,306.06

Earnings of the road—Continued.

Panama to Aspinwall—	
From freight.....	\$793,549.29
From treasure.....	8,963.60
From mails.....	3,288.05
From passengers.....	186,722.11
	<hr/>
	\$992,521.05
Miscellaneous receipts:	
Interest and exchange.....	14,825.16
Lighterage.....	125,138.52
Water supplied shipping.....	41,738.16
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	147,393.91
	<hr/>
	329,095.75
Total earnings.....	<hr/>
	3,267,922.86

EXPENSES.

Operating expenses on the Isthmus.....	2,591,063.56
Lost and damaged freight.....	14,726.07
New York office expenses.....	24,118.19
Miscellaneous expenses in New York.....	25,364.91
	<hr/>
	2,655,272.73
Subsidy to United States of Colombia.....	10,000.00
Subsidy to State of Panama.....	25,000.00
Redemption of subsidy bonds.....	57,000.00
Interest on subsidy bonds.....	168,240.00
Interest on sterling bonds.....	260,766.65
Drawback on Colombian produce.....	6,522.61
Interest.....	13,511.31
	<hr/>
	3,196,313.30
Net earnings.....	<hr/>
	71,609.56

E. Z. PENFIELD, *Secretary*.

Treasurer's statement.

DECEMBER 31, 1885.

ASSETS.

Cash in bank, New York.....	\$138,146.81
Cash in bank, London.....	71,833.74
Cash in hands of agents.....	164,419.79
Due from connecting steamship lines.....	244,994.77
Note receivable.....	718.75
United States of Colombia for advance of subsidy.....	2,747,000.00
Demand loan.....	130,000.00
Petty cash.....	157.92
	<hr/>
	3,497,271.78

LIABILITIES.

Isthmus drafts advised.....	\$10,499.05
Due sinking fund.....	207,975.21
Unpaid bills.....	498.40
Accrued interest on bonds.....	83,132.90
Six per cent subsidy bonds.....	2,747,000.00
	<hr/>
	3,049,105.56
	<hr/>
	448,166.22
Surplus December 31, 1884.....	1,076,556.66
Earnings for 1885.....	71,609.56
	<hr/>
	1,148,166.22
Ninety-eighth and ninety-ninth dividends paid 1885, 10 per cent.....	700,000.00
	<hr/>
Surplus December 31, 1885.....	448,166.22

E. Z. PENFIELD, *Treasurer*.

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUNDS.

DECEMBER 31, 1885.

The bonded indebtedness of the company consists of:

First. 3,689 seven per cent sterling bonds of £200 each, amounting to £737,800 (say \$3,689,000), of which the first 2,989 were issued October 10, 1867, and fall due October 10, 1897, and the remaining 700 were issued February 1, 1878, and fall due in seven half-yearly payments of 100 bonds each, beginning April 10, 1886, and ending April 10, 1889.

To meet this bonded indebtedness the company has the following sinking fund:

195 Panama 7 per cent sterling bonds, cost.....	\$178,255.01
717 Panama 6 per cent subsidy bonds, cost.....	741,150.83
Due from Panama Railroad Company.....	207,975.21
	<hr/>
	1,127,381.05

Second. 2,747 six per cent gold sinking-fund subsidy bonds of \$1,000 each, amounting to \$2,747,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company first to the payment of the interest, and, second, as a cumulative sinking fund for the redemption of the principal; the first 347 of outstanding bonds (which belong to the company's sinking fund) to be first redeemed, exhausting the subsidy sinking fund to November, 1890, and thereafter the bonds from 601 to 3000 to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

E. Z. PENFIELD, *Secretary*.

[Extracts from report of the Panama Railroad Company for 1886.]

Statement of earnings and expenses for the year ending December 31, 1886.

EARNINGS.

Earnings of the road:	
Aspinwall to Panama—	
From freight.....	\$1,432,940.03
From treasure.....	4,168.78
From mails.....	18,031.78
From passengers.....	250,543.30
	<hr/>
	\$1,705,683.89
Panama to Aspinwall—	
From freight.....	644,850.18
From treasure.....	10,897.85
From mails.....	3,011.10
From passengers.....	233,878.90
	<hr/>
	892,638.03
Miscellaneous receipts:	
Interest and exchange.....	66,057.48
Lighterage.....	147,804.06
Water supplied shipping.....	32,311.07
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	207,065.26
	<hr/>
	453,237.87
Total earnings.....	<hr/>
	3,051,559.79

EXPENSES.

Operating expenses on the Isthmus.....	2,345,010.26
Lost and damaged freight.....	8,045.90
New York office expenses.....	24,274.60
Miscellaneous expenses in New York.....	28,869.20
	<hr/>
	2,406,199.96
Subsidy to United States of Colombia.....	10,000.00

Subsidy to State of Panama	\$25,000.00
Redemption of subsidy bonds	60,000.00
Interest on subsidy bonds	164,820.00
Interest on sterling bonds	247,242.72
Drawback on Colombian produce	10,534.52
Interest	9,181.39
	<hr/>
	\$2,932,978.59

Net earnings 118,581.20

E. Z. PENFIELD, *Secretary*.

Treasurer's statement.

DECEMBER 31, 1886.

ASSETS.

Cash in bank, New York	\$7,192.62
Cash in bank, London	34,483.38
Cash in hands of agents	105,499.49
Due from connecting steamship lines	423,576.87
United States of Colombia for advance of subsidy	2,687,000.00
Loans on demand	265,000.00
Petty cash	19.38
	<hr/>
	3,522,771.62

LIABILITIES.

Isthmus drafts advised	\$31,256.65
Due sinking fund	138,617.10
Unpaid bills	19,635.38
Accrued interest on bonds	79,515.13
Six per cent subsidy bonds	2,687,000.00
	<hr/>
	2,956,024.26
	<hr/>
	566,747.42
Surplus December 31, 1885	448,166.22
Earnings for 1886	118,581.20
	<hr/>

Surplus December 31, 1886..... 566,747.42

E. Z. PENFIELD, *Treasurer*.

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUNDS.

DECEMBER 31, 1886.

The bonded indebtedness of the company consists of:

First. 3,489 seven per cent sterling bonds of £200 each, amounting to £697,800 (say \$3,489,000), of which the first 2,989 were issued October 10, 1867, and fall due October 10, 1897, and the remaining 500 were issued February 1, 1878, and fall due in five half-yearly payments of 100 bonds each, beginning April 10, 1887, and ending April 10, 1889.

To meet this bonded indebtedness the company has the following sinking fund:

195 Panama 7 per cent sterling bonds, cost	\$178,255.01
657 Panama 6 per cent subsidy bonds, cost	681,150.83
Due from Panama Railroad Company	138,617.10
	<hr/>
	998,022.94

Second. 2,687 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,687,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest, and second, as a cumulative sinking fund, for the redemption of the principal; the first 287 of outstanding bonds (which belong to the company's sinking fund) to be first redeemed, exhausting the subsidy sinking fund to November, 1890, and thereafter the bonds from 601 to 3000, to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

E. Z. PENFIELD, *Secretary*.

[Extracts from report of Panama Railroad Company for 1887.]

Statement of earnings and expenses for the year ending December 31, 1887.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight.....	\$1,626,468.68	
From treasure.....	11,200.49	
From mails.....	17,260.79	
From passengers.....	324,236.17	
		<hr/>
		\$1,979,166.13

Panama to Aspinwall—

From freight.....	798,140.03	
From treasure.....	19,015.18	
From mails.....	2,414.09	
From passengers.....	201,366.27	
		<hr/>
		1,020,935.57

Miscellaneous receipts:

Interest and exchange.....	52,106.04	
Lighterage.....	174,150.69	
Water supplied shipping.....	38,749.95	
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	224,474.10	
		<hr/>
		489,480.78

Total earnings	3,489,582.48
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EXPENSES.

Operating expenses on the Isthmus.....	2,291,953.94	
Lost and damaged freight.....	6,267.17	
New York office expenses.....	24,929.57	
Miscellaneous expenses in New York.....	25,317.02	
		<hr/>
	2,348,467.70	
Subsidy to United States of Colombia.....	10,000.00	
Subsidy to State of Panama.....	25,000.00	
Redemption of subsidy bonds.....	64,000.00	
Interest on subsidy bonds.....	161,220.00	
Interest on sterling bonds.....	233,379.27	
Drawback on Colombian produce.....	22,744.90	
Interest.....	4,939.24	
		<hr/>
		2,869,751.11

Net earnings	619,831.37
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E. Z. PENFIELD, *Secretary.**Treasurer's statement:*

DECEMBER 31, 1887.

ASSETS.

Cash in bank, New York.....	\$10,223.99	
Cash in bank, London.....	36,868.23	
Cash in hands of agents.....	1,670.72	
Notes receivable.....	75,600.00	
Dues from connecting steamship lines.....	386,512.24	
United States of Colombia for advance of subsidy.....	2,623,000.00	
Loans on demand.....	840,000.00	
Petty cash.....	212.49	
		<hr/>
		3,974,087.67

LIABILITIES.

Isthmus drafts advised.....	\$22,475.73	
Due sinking fund	66,052.84	
Unpaid bills	122.95	
Accrued interest on bonds	75,867.36	
Six per cent subsidy bonds	2,623,000.00	
		<hr/>
		\$2,787,508.88
		<hr/>
Surplus December 31, 1886.....	566,747.42	1,186,578.79
Earnings for 1887	619,831.37	
		<hr/>
Surplus December 31, 1887.....		1,186,578.79

E. Z. PENFIELD, *Treasurer.*

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUNDS.

DECEMBER 31, 1887.

The bonded indebtedness of the company consists of—

First. 3,289 seven per cent sterling bonds of £200 each, amounting to £657,800 (say \$3,289,000), of which the first 2,989 were issued October 10, 1867, and fall due October 10, 1897, and the remaining 300 were issued February 1, 1878, and fall due in three half-yearly payments of 100 bonds each, beginning April 10, 1888, and ending April 10, 1889.

To meet this bonded indebtedness the company has the following sinking fund:

195 Panama 7 per cent sterling bonds, cost	\$178,255.01
593 Panama 6 per cent subsidy bonds, cost	617,150.83
Due from Panama Railroad Company.....	66,052.84
	<hr/>
	861,458.68

Second. 2,623 six per cent gold sinking fund subsidy bonds of \$1,000 each amounting to \$2,623,000 were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest, and second, as a cumulative sinking fund, for the redemption of the principal; the first 223 of outstanding bonds (which belong to the company's sinking fund) to be first redeemed, exhausting the subsidy sinking fund to November, 1890, and thereafter the bonds from 601 to 3,000, to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1, after each drawing, and thereby redeeming the whole issue in 1908.

E. Z. PENFIELD, *Secretary.*

[Extracts from report of the Panama Railroad Company for 1888.]

Statement of earnings and expenses for the year ending December 31, 1888.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight.....	\$1,621,131.00
From treasure.....	13,087.32
From mails	19,463.05
From passengers	319,523.99
	<hr/>
	\$1,973,205.36

Panama to Aspinwall—

From freight.....	652,764.59
From treasure.....	19,095.72
From mails	2,466.72
From passengers	243,921.83
	<hr/>
	918,248.86

Miscellaneous receipts:

Interest and exchange.....	\$17, 149. 08	
Lighterage.....	210, 000. 52	
Water supplied shipping.....	58, 701. 36	
Rental of property, ballast, wharfage, light dues, telegraph, Fox River shops, etc.....	513, 354. 03	
		<u>\$799, 204. 99</u>
Total earnings		3, 690, 659. 21

EXPENSES.

Operating expenses on the Isthmus.....	1, 751, 618. 75	
Fox River shops	215, 823. 23	
Lost and damaged freight.....	7, 632. 86	
New York office expenses	31, 296. 88	
Miscellaneous expenses in New York	29, 665. 71	
		<u>2, 036, 037. 43</u>
Subsidy to United States of Colombia.....	10, 000. 00	
Subsidy to State of Panama	25, 000. 00	
Redemption of subsidy bonds	68, 000. 00	
Interest on subsidy bonds.....	157, 380. 00	
Interest on sterling bonds.....	219, 998. 73	
Drawback on Colombian produce.....	23, 698. 60	
		<u>2, 540, 114. 76</u>
Net earnings		1, 150, 544. 45

ERNEST L. OPPENHEIM,
Secretary.

Treasurer's statement.

DECEMBER 31, 1888.

CURRENT ASSETS.

Cash in bank, New York	\$112, 207. 11	
Cash in bank, London	35, 577. 50	
Cash in hands of agents.....	47, 296. 22	
Notes receivable.....	500. 00	
Uncollected earnings.....	272, 325. 57	
United States of Colombia, for advance of subsidy	2, 555, 000. 00	
Loans on demand	100, 000. 00	
Petty cash	30. 58	
Due from sinking fund.....	29, 739. 73	
Amount on deposit with comptroller State of New York	3, 326. 67	
Cash in bank, New York—Isthmus draft account.....	2, 457. 03	
		<u>3, 158, 460. 41</u>

CURRENT LIABILITIES.

Isthmus drafts advised.....	\$16, 871. 58	
Unpaid bills	5, 698. 65	
Accrued interest on bonds	72, 159. 57	
Six per cent subsidy bonds.....	2, 555, 000. 00	
		<u>2, 649, 729. 80</u>
Excess of assets		<u>508, 731. 61</u>
Surplus December 31, 1887, as per balance		1, 702, 638. 91
Surplus December 31, 1888, as per balance		<u>1, 236, 847. 36</u>
Decrease of surplus		465, 791. 55

The following dividends were paid during the year ending December 31, 1888:

Dividend No. 100, paid January 18, 6 per cent.
 Dividend No. 101, paid May 1, 5 per cent.
 Dividend No. 102, paid September 12, 7 per cent.
 Dividend No. 103, paid November 30, 4 per cent.
 Dividend No. 104, paid December 21, 1 per cent.

ERNEST L. OPPENHEIM,
Treasurer.

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUNDS.

DECEMBER 31, 1888.

The bonded indebtedness of the company consists of:

First, 3,089 seven per cent sterling bonds of £200 each, amounting to £617,800 (say \$3,089,000), of which the first 2,989 were issued October 10, 1867, and fall due October 10, 1897, and the remaining 100 were issued February 1, 1878, and fall due April 10, 1889.

To meet this bonded indebtedness the company has the following sinking fund:

195 Panama 7 per cent sterling bonds, valuation.....	\$195,000.00
543 Panama 6 per cent subsidy bonds, valuation.....	543,000.00

738,000.00

Less amount due Panama Railroad Company

29,739.73

708,260.27

Second, 2,555 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,555,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest, and, second, as a cumulative sinking fund, for the redemption of the principal; the first 155 of outstanding bonds (which belong to the company's sinking fund) to be first redeemed, exhausting the subsidy sinking fund to November, 1890, and thereafter the bonds from 601 to 3,000 to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

ERNEST L. OPPENHEIM,
Secretary.

[Extracts from report of the Panama Railroad Company for 1889.]

Statement of earnings and expenditures for the year ending December 31, 1889.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight.....	\$1,018,725.19
From treasure.....	2,179.75
From mails.....	24,799.42
From passengers.....	108,201.57

\$1,153,905.93

Panama to Aspinwall—

From freight.....	516,851.45
From treasure.....	13,058.87
From mails.....	3,105.22
From passengers.....	112,807.71

645,823.25

Miscellaneous receipts:

Interest and exchange.....	19,506.50
Lighterage.....	201,711.10
Water supplied shipping.....	35,064.00
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	101,814.62

358,096.22

Total earnings..... 2,157,825.40

EXPENDITURES.

Operating expenses on the Isthmus.....	\$1, 127, 152. 66	
Lost and damaged freight.....	7, 486. 26	
Drawback on Colombian produce.....	11, 965. 10	
New York office expenses.....	37, 662. 57	
Miscellaneous expenses in New York.....	48, 224. 04	
Total expenses.....		\$1, 232, 490. 63
Leaving net earnings.....		925, 334. 77
From which deduct:		
Appropriation to sinking fund.....	75, 000. 00	
Subsidy to United States of Colombia.....	35, 000. 00	
Redemption of subsidy bonds.....	71, 000. 00	
Interest on subsidy bonds.....	153, 300. 00	
Interest on sterling bonds.....	206, 885. 08	
		541, 185. 08
Surplus earnings.....		384, 149. 69

ERNEST L. OPPENHEIM,
Secretary.

Comparative statement of earnings and expenses for the years 1888 and 1889.

Gross earnings, 1888.....	\$3, 690, 659. 21	
Gross earnings, 1889.....	2, 157, 825. 40	
Decrease (41.53 per cent) ..	1, 532, 833. 81	
Operating expenses, 1888	2, 059, 736. 03	= 55.81 per cent of gross earnings
Operating expenses, 1889	1, 232, 490. 63	= 57.12 per cent of gross earnings.
Decrease (40.16 per cent) ..	827, 245. 40	
Net earnings, 1888.....	1, 630, 923. 18	= 44.19 per cent of gross earnings.
Net earnings, 1889.....	925, 334. 77	= 42.88 per cent of gross earnings.
Decrease (43.26 per cent) ..	705, 588. 41	

ERNEST L. OPPENHEIM,
Secretary.

Treasurer's statement.

DECEMBER 31, 1889.

CURRENT ASSETS.

Cash in bank, New York.....	\$12, 594. 50
Cash in bank, London.....	48, 079. 42
Cash in hands of agents.....	8, 232. 54
Deposited with trust companies.....	220, 000. 00
Balance on deposit with comptroller State of New York.....	311. 91
Uncollected earnings.....	138, 289. 41
Petty cash.....	171. 61
Accrued interest on deposits.....	586. 30
Due from sinking fund.....	7, 103. 58
Coal and supplies on hand.....	237, 880. 08
United States of Colombia for advance of subsidy.....	2, 484, 000. 00
	3, 157, 249. 35

CURRENT LIABILITIES.

Isthmus drafts	\$68,513.81	
Miscellaneous accounts unpaid	14,357.28	
Coupons not presented	1,530.00	
Accrued interest on bonds	69,940.69	
Due United States of Colombia	18,750.00	
Six per cent subsidy bonds	2,484,000.00	
		<u>\$2,657,091.78</u>
Excess of assets		500,157.57
Surplus, December 31, 1888, as per balance		1,400,458.19
Surplus, December 31, 1889, as per balance		<u>1,229,607.88</u>
Decrease of surplus		170,850.31

The following dividends were paid during the year ending December 31, 1889:

Dividend No. 105 paid March 6, 5 per cent.

Dividend No. 106, paid July 31, 4 per cent.

ERNEST L. OPPENHEIM,
Treasurer.

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUND.

DECEMBER 31, 1889.

The bonded indebtedness of the company consists of:

First. 2,989 seven per cent sterling bonds of £200 each, amounting to £597,800 (say \$2,989,000), which were issued October 10, 1867, and fall due October 10, 1897.

To meet this bonded indebtedness the company has the following sinking fund:

219 Panama 7 per cent sterling bonds, valuation	\$219,000.00
472 Panama 7 per cent subsidy bonds, valuation	472,000.00
41 six per cent railway mortgage bonds, cost	42,233.75
	<u>733,233.75</u>
Less amount due Panama Railroad Company	7,103.58
	<u>726,130.17</u>

Second. 2,484 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,484,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March, 27, 1908, the same to be applied by the company, first, to the payment of the interest, and second, as a cumulative sinking fund, for the redemption of the principal; the first 84 of outstanding bonds (which belong to the company's sinking fund) to be first redeemed, exhausting the subsidy sinking fund to November, 1890, and thereafter the bonds from 601 to 3,000, to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

ERNEST L. OPPENHEIM,
Secretary.

[Extracts from report of the Panama Railroad Company for 1890.]

Statement of earnings and expenditures for the year ending December 31, 1890.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight	\$955,683.49
From treasure	2,425.74
From mails	22,995.21
From passengers	57,350.81
	<u>\$1,038,455.25</u>

Earnings of the road—Continued.

Panama to Aspinwall—	
From freight.....	\$491,691.97
From treasure.....	18,796.42
From mails.....	3,472.29
From passengers.....	57,237.83
	<hr/>
	\$571,198.51
Miscellaneous receipts:	
Interest and exchange.....	5,754.08
Ligherage.....	219,680.61
Water supplied shipping.....	34,927.95
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	79,800.99
	<hr/>
	340,163.63
Total earnings.....	<hr/>
	1,949,817.39

EXPENDITURES.

Operating expenses on the Isthmus.....	917,954.76
Lost and damaged freight.....	7,949.38
Drawback on Colombian produce.....	10,634.14
New York office expenses.....	39,955.83
Miscellaneous expenses in New York: Legal expenses, judgments, agency charges, etc.....	61,456.36
	<hr/>
Total expenses.....	1,037,950.47
Leaving net earnings.....	<hr/>
	911,866.92
From which deduct—	
Appropriation to sinking fund.....	100,000.00
Subsidy to United States of Colombia.....	35,000.00
Redemption of subsidy bonds.....	76,000.00
Interest on subsidy bonds.....	149,040.00
Interest on sterling bonds.....	202,953.10
	<hr/>
	562,993.10
Surplus earnings.....	<hr/>
	348,873.82

E. A. DRAKE, *Secretary pro tem.*

Comparative statement of earnings and expenses for the years 1889 and 1890.

Gross earnings, 1889.....	\$2,157,825.40
Gross earnings, 1890.....	1,949,817.39
Decrease (9.63 per cent).....	<hr/>
	208,008.01
Operating expenses, 1889.....	1,232,490.63=57.12 per cent of gross earnings.
Operating expenses, 1890.....	1,037,950.47=53.23 per cent of gross earnings.
Decrease (15.78 per cent).....	<hr/>
	194,540.16
Net earnings, 1889.....	925,334.77=42.88 per cent of gross earnings.
Net earnings, 1890.....	911,866.92=46.76 per cent of gross earnings.
Decrease (1.45 per cent).....	<hr/>
	13,467.85

E. A. DRAKE, *Secretary pro tem.*

Treasurer's statement.

DECEMBER 31, 1890.

CURRENT ASSETS.

Cash in bank, New York.....	\$26,826.91
Cash in bank, London (£11,372 13s. 10d. at \$4.85 the company's rate).....	55,157.56
Cash in hands of agents.....	47,827.34
Deposited with trust companies.....	120,000.00
Uncollected earnings (partly estimated).....	153,950.43
Petty cash.....	<hr/>
	184.42

Accrued interest on deposits.....	\$176. 71
Coal and supplies on hand	197, 073. 04
United States of Colombia for advance of subsidy.....	2, 408, 000. 00
	<hr/>
	3, 009, 196. 41

CURRENT LIABILITIES.

Isthmus drafts	\$39, 280. 69
Miscellaneous accounts unpaid	10, 984. 17
Coupons not presented.....	1, 440. 00
Accrued interest on bonds.....	69, 180. 66
Due United States of Colombia.....	18, 750. 00
Six per cent subsidy bonds.....	2, 408, 000. 00
Due to sinking fund	21, 161. 12
	<hr/>
	2, 568, 796. 64
	<hr/>
Excess of assets	440, 399. 77
	<hr/>
Surplus December 31, 1890, as per balance	1, 362. 952. 86
Surplus December 31, 1889, as per balance	1, 229, 607. 88
	<hr/>
Increase of surplus.....	133, 344. 98

The following dividends were paid during the year ending December 31, 1890:

Dividend No. 107, paid March 27, 3½ per cent.

Dividend No. 108, paid December 16, 1½ per cent.

E. A. DRAKE, *Treasurer pro tem.*

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUND.

DECEMBER 31, 1890.

The bonded indebtedness of the company consists of:

First, 2,989 seven per cent sterling bonds of £200 each, amounting to £597,800 (say \$2,989,000), which were issued October 10, 1867, and fall due October 10, 1897.

To meet this bonded indebtedness the company has the following sinking fund:

219 Panama 7 per cent general mortgage sterling bonds, valuation ...	\$249, 000. 00
411 Panama 6 per cent subsidy bonds, valuation.....	411, 000. 00
100 six per cent railway bonds (50 first mortgage, 50 second mortgage), cost.....	100, 932. 25
100 five per cent railway consolidated mortgage bonds, cost	92, 520. 84
	<hr/>
	853, 453. 09
Due from Panama Railroad Company.....	21, 161. 12
	<hr/>
	874, 614. 21

Second, 2,408 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,408,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first to the payment of the interest, and second, as a cumulative sinking fund, for the redemption of the principal; the first 8 numerically of outstanding bonds (which belong to the company's sinking fund) to be first redeemed, exhausting the subsidy sinking fund to November, 1890, and thereafter the bonds from 601 to 3,000 to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

E. A. DRAKE, *Secretary pro tem.*

[Extracts from report of the Panama Railroad Company for 1891.]

Statement of earnings and expenditures for the year ending December 31, 1891.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight.....	\$919,307.13	
From treasure.....	2,346.84	
From mails.....	23,631.62	
From passengers.....	52,884.03	
		\$998,169.62

Panama to Aspinwall—

From freight.....	481,832.87	
From treasure.....	14,731.31	
From mails.....	3,610.73	
From passengers.....	62,694.72	
		562,869.63

Miscellaneous receipts:

Interest and exchange.....	5,833.34	
Lighterage.....	238,601.94	
Water supplied shipping.....	42,565.86	
Rental of property, ballast, wharfage, light, dues, telegraph, etc.....	83,073.38	
		370,074.52

Collections in excess of "estimated" earnings for previous years..... 5,888.40

Total earnings 1,937,002.17

EXPENDITURES.

Operating expenses on the Isthmus.....	870,199.04	
Lost and damaged freight.....	7,088.38	
Drawback on Colombian produce.....	10,773.23	
New York office expenses.....	39,391.52	
Miscellaneous expenditures in New York; legal expenses, judgments, agency charges, etc.....	47,316.07	

Total expenses..... 974,768.24

Leaving net earnings 962,233.93

From which deduct:

Appropriation to sinking fund.....	175,000.00	
Subsidy to United States of Colombia.....	35,000.00	
Redemption of subsidy bonds.....	81,000.00	
Interest on subsidy bonds.....	144,480.00	
Interest on sterling bonds.....	202,953.10	
		638,433.10

Surplus earnings 323,800.83

ERNEST L. OPPENHEIM, *Secretary.**Comparative statement of earnings and expenses for the years 1890 and 1891.*

Gross earnings, 1890.....	\$1,949,817.39	
Gross earnings, 1891.....	1,937,002.17	
Decrease (0.65 per cent)	12,815.22	
Operating expenses, 1890.....	1,037,950.47	=53.23 per cent of gross earnings.
Operating expenses, 1891.....	974,768.24	=50.32 per cent of gross earnings.
Decrease (6.08 per cent)	63,182.23	
Net earnings, 1890.....	911,866.92	=46.77 per cent of gross earnings.
Net earnings, 1891.....	962,233.93	=49.68 per cent of gross earnings.
Increase (5.52 per cent)	50,367.01	

ERNEST L. OPPENHEIM, *Secretary.*

Condensed balance sheet, December 31, 1891.

ASSETS.		LIABILITIES.	
Cost of road and equipment.....	\$9,835,820.73	Capital stock.....	\$7,000,000.00
Real estate at Isthmus.....	268,616.74	General mortgage 7 per cent bonds.....	2,989,000.00
Material on hand.....	232,023.46	Subsidy 6 per cent bonds.....	2,327,000.00
Uncollected earnings (partly estimated).....	127,118.48	Fund for redemption of subsidy bonds.....	56,570.00
Accounts receivable.....	15,509.30	Accrued interest on bonds.....	68,370.66
Sinking fund.....	1,108,554.63	Isthmus drafts unrepresented.....	48,417.84
Cash on hand in New York.....	176,973.38	Overdue coupons.....	1,200.00
Cash on hand in London.....	22,799.54	Unclaimed dividends.....	149.00
Cash on hand in Isthmus agency..	20,303.81	Balances due deceased or missing employees.....	894.70
Accrued interest on deposits.....	2,316.20	Due department of Panama.....	18,750.00
Advance of subsidy to United States of Colombia.....	2,327,000.00	Due to connecting companies.....	21,584.19
		Accounts payable.....	6,561.98
		Due sinking fund.....	12,343.79
		Surplus December 31, 1890.....	1,362,952.86
		Addition to surplus for year 1891...	217,741.25
			14,131,536.27
To surplus December 31, 1891.....	1,580,694.11		

ERNEST L. OPPENHEIM, *Secretary.*

Treasurer's statement.

DECEMBER 31, 1891.

CURRENT ASSETS.

Cash in bank, New York.....	\$26,965.91
Cash in bank, London (£4,700 18s. 8d., at \$4.85, the company's rate) ..	22,799.54
Cash in hands of agents.....	20,303.81
Deposited with trust companies.....	150,000.00
Uncollected earnings (partly estimated).....	127,118.48
Petty cash.....	7.47
Accrued interest on deposits.....	2,316.20
Coal and supplies on hand.....	232,023.46
United States of Colombia for advance of subsidy.....	2,327,000.00
	2,908,534.87

CURRENT LIABILITIES.

Isthmus drafts.....	\$48,417.84
Miscellaneous accounts unpaid.....	18,765.52
Coupons not presented.....	1,200.00
Accrued interest on bonds.....	68,370.66
Due United States of Colombia.....	18,750.00
Six per cent subsidy bonds.....	2,327,000.00
Due to sinking fund.....	12,343.79
	2,494,847.81
Excess of assets.....	413,687.06
Surplus December 31, 1891, as per balance.....	1,580,694.11
Surplus December 31, 1890, as per balance.....	1,362,952.86
Increase of surplus.....	217,741.25

The following dividends were paid during the year ending December 31, 1891:

Dividend No. 109, paid March 27, 2 per cent.

Dividend No. 110, paid December 29, 3 per cent.

ERNEST L. OPPENHEIM, *Treasurer.*

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUND.

DECEMBER 31, 1891.

The bonded indebtedness of the company consists of:

First, 2,989 seven per cent sterling bonds of £200 each, amounting to £597,800 (say, \$2,989,000), which were issued October 10, 1867, and fall due October 10, 1897.

To meet this bonded indebtedness the company has the following sinking fund:

273 Panama 7 per cent general mortgage sterling bonds, valuation....	\$273,000.00
409 Panama 6 per cent subsidy bonds, valuation.....	409,000.00
100 six per cent railway mortgage bonds, cost	101,080.00
280 five per cent railway mortgage bonds, cost	231,567.09
100 four per cent railway mortgage bonds, cost	81,563.75
	<hr/>
	1,096,210.84
Due from Panama Railroad Company.....	12,343.79
	<hr/>
	1,108,554.63

Second, 2,327 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,327,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest and, second, as a cumulative sinking fund for the redemption of the principal, the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

ERNEST L. OPPENHEIM, *Secretary.*

[Extracts from the Report of the Panama Railroad Company for 1892.]

Statement of earnings and expenditures for the year ending December 31, 1892.

EARNINGS.

Earnings of the road:

Aspinwall to Panama—

From freight.....	\$754,147.53	
From treasure.....	1,680.09	
From mails.....	22,828.10	
From passengers	50,023.21	
	<hr/>	\$828,678.93

Panama to Aspinwall—

From freight.....	535,600.79	
From treasure.....	13,393.66	
From mails.....	4,134.07	
From passengers	54,184.32	
	<hr/>	607,312.84

Miscellaneous receipts:

Interest and exchange.....	4,276.47	
Lighterage.....	213,677.73	
Water supplied shipping.....	44,138.06	
Rental of property, ballast, wharfage, light dues, telegraph, etc	68,165.21	
	<hr/>	330,257.47
Collections in excess of "estimated" earnings for previous year..		2,495.15

Total earnings..... 1,768,744.39

EXPENDITURES.

Operating expenses on the Isthmus.....	\$848,985.33	
Lost and damaged freight.....	9,597.46	
Drawback on Colombian produce	13,326.13	
New York office expenses.....	42,461.60	
Miscellaneous expenditures in New York: Legal expenses, judgments, agency charges, etc.....	33,983.87	
Total expenses.....		\$948,354.39
Leaving net earnings.....		820,390.00
From which deduct:		
Appropriation to sinking fund	175,000.00	
Subsidy to United States of Colombia.....	35,000.00	
Redemption of subsidy bonds.....	85,000.00	
Interest on subsidy bonds	139,620.00	
Interest on sterling bonds.....	202,953.10	
		637,573.10
Surplus earnings		182,816.90

ERNEST L. OPPENHEIM,
Secretary.

Comparative statement of earnings and expenses for the years 1891 and 1892.

Gross earnings, 1891.....	\$1,937,002.17	
Gross earnings, 1892.....	1,768,744.39	
Decrease (8.69 per cent)....	168,257.78	
Operating expenses, 1891	974,768.24=50.32 per cent of gross earnings.	
Operating expenses, 1892	948,354.39=53.61 per cent of gross earnings.	
Decrease (2.70 per cent)....	26,413.85	
Net earnings, 1891.....	962,233.93=49.68 per cent of gross earnings.	
Net earnings, 1892.....	820,390.00=46.39 per cent of gross earnings.	
Decrease (14.74 per cent)....	141,843.93	

ERNEST L. OPPENHEIM,
Secretary.

Condensed balance sheet, December 31, 1892.

ASSETS.		LIABILITIES.	
Cost of road and equipment.....	\$10,205,320.73	Capital stock	\$7,000,000.00
Real estate at Isthmus	283,616.74	General mortgage 7 per cent bonds.....	4,000,000.00
Material on hand	180,288.91	Subsidy 6 per cent bonds.....	2,242,000.00
Uncollected earnings (partly esti- mated)	133,535.85	Fund for redemption of subsidy bonds.....	56,950.00
Accounts receivable.....	17,684.58	Accrued interest on bonds	74,515.54
Sinking fund	1,351,825.22	Isthmus drafts unrepresented	39,746.13
Cash on hand in New York.....	162,929.34	Overdue coupons.....	840.00
Cash on hand in London.....	25,850.23	Unclaimed dividends	149.00
Cash on hand in Isthmus agency..	27,114.86	Balances due deceased or missing employees	894.70
Due from Isthmus agency.....	8,286.93	Due department of Panama.....	18,750.00
General European agents	516.89	Due Colombian Government.....	10,000.00
Accrued interest on deposits	157.49	Due connecting companies.....	2,530.92
Advance of subsidy to United States of Colombia	2,242,000.00	Accounts payable	2,939.16
General mortgage 7 per cent ster- ling bonds in treasury.....	651,000.00	Bills payable	180,000.00
Due by sinking fund	96,648.12	Miscellaneous accounts unpaid	678.89
		Surplus December 31, 1891	1,580,694.11
		Addition to surplus for year 1892...	156,087.49
	15,366,775.94		15,366,775.94
To surplus December 31, 1892.....	1,736,781.60		

ERNEST L. OPPENHEIM,
Secretary.

Treasurer's statement.

DECEMBER 31, 1892.

CURRENT ASSETS.

Cash in bank, New York	\$47,790.40
Cash in bank, London (£5,329 19s. 1d. at \$4.85, the company's rate) ..	25,850.28
Cash in hands of agents	27,631.75
Deposited with trust companies	115,000.00
Uncollected earnings (partly estimated)	133,535.85
Petty cash	138.94
Accrued interest on deposits	157.49
Coal and supplies on hand	180,288.91
United States of Colombia for advance of subsidy	2,242,000.00
Sinking fund	96,648.12
Due from Isthmus agency	8,286.93
	<hr/>
	2,877,328.67

CURRENT LIABILITIES.

Isthmus drafts	\$39,746.13
Miscellaneous accounts unpaid	169,508.09
Coupons not presented	840.00
Accrued interest on bonds	74,515.54
Due department of Panama	18,750.00
Due Government of Colombia	10,000.00
Six per cent subsidy bonds	2,242,000.00
	<hr/>
	2,555,359.76
Excess of assets	<hr/>
	321,968.91
Surplus December 31, 1892, as per balance	1,736,781.60
Surplus December 31, 1891, as per balance	1,580,694.11
	<hr/>
Increase of surplus	156,087.49

The following dividends were paid for the year ending December 31, 1892:

Dividend No. 111, paid March 28, 2 per cent.

Dividend No. 112, paid January 3, 1893, 2 per cent.

ERNEST L. OPPENHEIM,
Treasurer.

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUND.

DECEMBER 31, 1892.

The bonded indebtedness of the company consists of:

First, 4,000 seven per cent sterling bonds of £200 each, amounting to £800,000 (say, \$4,000,000), of which 2,989 were issued October 10, 1867, and fall due October 10, 1897. The remaining 1,011 were issued on the 10th of October, 1892, and fall due on the 10th of October, 1897, but by resolution of the board of directors the holder is given the option of having them extended for ten years, at 5 per cent per annum, to the 10th day of October, 1907, the company reserving to itself the right of redemption at 105 and accrued interest of such extended bonds, at any date subsequent to the 10th day of October, 1902. Of this latter issue 651 bonds are in the company's treasury.

To meet this bonded indebtedness the company has the following sinking fund:

633 Panama seven per cent general mortgage sterling bonds, valuation ..	\$633,000.00
393 Panama six per cent subsidy bonds, valuation	393,000.00
100 six per cent railway mortgage bonds, cost	101,080.00
270 five per cent railway mortgage bonds, cost	239,829.59
100 four per cent railway mortgage bonds, cost	81,563.75
	<hr/>
	1,448,473.34
Due Panama Railroad Company	96,648.12
	<hr/>
	1,351,825.22

Second. 2,242 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,242,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest, and, second, as a cumulative sinking fund, for the redemption of the principal; the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

ERNEST L. OPPENHEIM,
Secretary.

[Extracts from Report of the Panama Railroad Company for 1893.]

Statement of earnings and expenditures for the year ending December 31, 1893.

EARNINGS.

Earnings of the road:

Colon to Panama—

From freight.....	\$553,665.89	
From treasure.....	2,543.83	
From mails.....	29,253.98	
From passengers.....	37,470.67	
		\$822,934.37

Panama to Colon—

From freight.....	368,799.81	
From treasure.....	14,507.31	
From mails.....	5,337.54	
From passengers.....	35,433.76	
		424,078.42

Miscellaneous receipts:

Lighterage.....	219,067.31	
Water supplied shipping.....	44,711.15	
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	103,335.47	
		367,113.93

Total earnings..... 1,414,126.72

EXPENDITURES.

Operating expenses on the Isthmus.....	783,041.24	
Lost and damaged freight.....	1,859.57	
Drawback on Colombian produce.....	14,351.09	
New York office expenses.....	41,854.78	
Interest and exchange.....	3,889.00	
Miscellaneous expenditures in New York: Legal expenses, judgments, agency charges, etc.....	71,765.70	

Total expenses..... 916,761.38

Leaving net earnings..... 497,365.34

From which deduct:

Expenses steamer <i>Saturn</i> , voyage to Panama.....	23,775.47	
Subsidy to United States of Colombia.....	35,000.00	
Redemption of subsidy bonds.....	90,000.00	
Interest on subsidy bonds.....	133,650.00	
Interest on sterling bonds.....	233,508.10	
		515,933.57

Deficit..... 18,568.23

E. A. DRAKE, Secretary.

228 INVESTIGATION OF PANAMA RAILWAY COMPANY.

Comparative statement of earnings and expenses for the years 1892 and 1893.

Gross earnings, 1892	\$1,768,744.39
Gross earnings, 1893	1,414,126.72
Decrease (20.04 per cent) ...	354,617.67
Operating expenses, 1892.....	948,354.39=50.32 per cent of gross earnings.
Operating expenses, 1893.....	916,761.38=64.82 per cent of gross earnings.
Decrease (3.33 per cent).....	31,593.01
Net earnings, 1892.....	820,390.00=49.68 per cent of gross earnings.
Net earnings, 1893.....	497,365.34=35.18 per cent of gross earnings.
Decrease (39.37 per cent).....	323,024.66

E. A. DRAKE, *Secretary.*

Condensed balance sheet, December 31, 1893.

ASSETS.		LIABILITIES.	
Cost of road and equipment.....	\$10,215,320.73	Capital stock	\$7,000,000.00
Real estate at Isthmus	263,616.74	General mortgage 7 per cent bonds.....	4,000,000.00
Material on hand.....	169,322.99	Subsidy 6 per cent bonds.....	2,152,000.00
Uncollected earnings (partly estimated)	80,967.67	Fund for redemption of subsidy bonds.....	57,430.00
Accounts receivable.....	18,648.14	Accrued interest on bonds	74,768.69
Sinking fund.....	1,436,189.22	Isthmus drafts unrepresented	40,549.13
Cash on hand in New York	177,051.32	Overdue coupons	1,710.00
Cash on hand in London.....	22,883.24	Unclaimed dividends	149.00
Cash on hand in Isthmus agency..	30,204.73	Balances due deceased or missing employees.....	894.70
Due from Isthmus agency.....	4,855.81	Due Department of Panama.....	18,750.00
General European agents	2,094.85	Due connecting companies.....	32,513.86
Accrued interest on deposits	1,306.94	Accounts payable	2,441.24
Advance of subsidy to United States of Colombia	2,152,000.00	Miscellaneous accounts unpaid	3,325.34
General mortgage 7 per cent sterling bonds in treasury	471,000.00	Corrected surplus, Dec. 31, 1892	1,717,554.65
Due by sinking fund	17,284.12	Addition to surplus for year 1893...	75,795.77
Advances to Panama R. R. Company's steamers	115,131.38		
	15,177,882.38		15,177,882.38
To surplus Dec. 31, 1893.....	1,793,850.42		

E. A. DRAKE, *Secretary.*

Treasurer's statement.

DECEMBER 31, 1893.

CURRENT ASSETS.	
Cash in bank, New York	\$51,910.31
Cash in bank, London (£4,719 19s. 1d. at \$4.85, the company's rate) ..	22,888.24
Cash in hands of agents.....	32,299.08
Deposited with trust companies	125,000.00
Uncollected earnings (partly estimated)	80,967.67
Petty cash	141.01
Accrued interest on deposits.....	1,306.94
Coal and supplies on hand	169,322.99
United States of Colombia for advance of subsidy.....	2,152,000.00
Sinking fund	17,284.12
Due from Isthmus agency.....	23,358.66
	2,676,479.02

CURRENT LIABILITIES.

Isthmus drafts	\$40,549.13
Miscellaneous accounts unpaid	21,629.58
Coupons not presented	1,710.00
Accrued interest on bonds	74,768.69
Due Department of Panama	18,750.00
Six per cent subsidy bonds	2,152,000.00
	<hr/> \$2,309,407.40

Excess of assets 367,071.62

Surplus December 31, 1893, as per balance 1,793,350.42
 Corrected surplus December 31, 1892, as per balance 1,717,554.65

Increase of surplus 75,795.77

ERNEST L. OPPENHEIM, *Treasurer.*

Statement of bonded indebtedness and sinking fund.

DECEMBER 31, 1893.

The bonded indebtedness of the company consists of:

First, 4,000 seven per cent sterling bonds of £200 each, amounting to £800,000 (say \$4,000,000), of which 2,989 were issued October 10, 1867, and fall due October 10, 1897. The remaining 1,011 were issued on the 10th of October, 1892, and fall due on the 10th of October, 1897, but by resolution of the board of directors the holder is given the option of having them extended for ten years, at 5 per cent per annum, to the 10th day of October, 1907; the company reserving to itself the right of redemption at 1905 and accrued interest of such extended bonds at any date subsequent to the 10th day of October, 1902. Of this latter issue 471 bonds are in the company's treasury.

To meet this bonded indebtedness the company has the following sinking fund:

663 Panama seven per cent general mortgage sterling bonds, valuation ..	\$663,000.00
368 Panama six per cent subsidy bonds, valuation	368,000.00
100 six per cent railway mortgage bonds, cost	101,080.00
270 five per cent railway mortgage bonds, cost	239,829.59
100 four per cent railway mortgage bonds, cost	81,563.75

Due Panama Railroad Company 1,453,473.34
 17,284.12

1,436,189.22

Second, 2,152 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,152,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest, and second, as a cumulative sinking fund for the redemption of the principal; the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

ERNEST L. OPPENHEIM, *Treasurer.*

[Extracts from Report of the Panama Railroad Company for 1894.]

Statement of earnings and expenditures for the year ending December 31, 1894.

EARNINGS.

Earnings of the road:

Colon to Panama—

From freight	\$574,807.91
From treasure	6,516.62
From mails	29,648.53
From passengers	31,431.54

\$642,404.60

Earnings of the road—Continued.

Panama to Colon—

From freight.....	\$370,582.42	
From treasure.....	10,801.56	
From mails.....	4,835.30	
From passengers.....	27,909.89	
	<hr/>	\$414,129.17

Miscellaneous receipts:

Interest and exchange.....	1,510.41	
Lighterage.....	213,590.41	
Water supplied shipping.....	42,365.38	
Rental of property, ballast, wharfage, light dues, telegraph, etc.....	62,285.77	
	<hr/>	319,751.97

Total earnings 1,376,285.74

EXPENDITURES.

Operating expenses on the Isthmus.....	631,986.30	
Lost and damaged freight.....	2,657.94	
Drawback on Colombian produce.....	16,716.52	
New York office expenses.....	44,179.37	
Miscellaneous expenditures in New York.....	18,206.91	
Legal expenses and judgments.....	24,240.06	
Agency charges.....	7,105.94	
	<hr/>	745,093.04

Total expenses 745,093.04

Leaving net earnings 631,192.70

From which deduct:

Subsidy to Republic of Colombia.....	35,000.00	
Redemption of subsidy bonds.....	97,000.00	
Interest on subsidy bonds.....	129,120.00	
Interest on sterling bonds.....	239,619.10	
	<hr/>	500,739.10

Surplus..... 130,453.60

E. A. DRAKE, *Secretary*.

Comparative statement of earnings and expenses for the years 1893 and 1894.

Gross earnings, 1893.....	\$1,414,126.72	
Gross earnings, 1894.....	1,376,285.74	
Decrease (2.67 per cent)....	37,840.98	
Operating expenses, 1893.....	\$916,761.38=64.82 per cent of gross earnings.	
Operating expenses, 1894.....	745,093.04=54.14 per cent of gross earnings.	
Decrease (18.72 per cent)...	171,668.34	
Net earnings, 1893.....	\$497,365.34=35.18 per cent of gross earnings.	
Net earnings, 1894.....	631,192.70=45.86 per cent of gross earnings.	
Increase (26.91 per cent) ...	133,827.36	

E. A. DRAKE, *Secretary*.

Condensed balance sheet, December 31, 1894.

ASSETS.		LIABILITIES.	
Cost of road and equipment.....	\$10,225,320.73	Capital stock.....	\$7,000,000.00
Real estate at Isthmus.....	263,616.74	General mortgage bonds.....	4,000,000.00
Material on hand.....	117,801.64	Subsidy 6 per cent bonds.....	2,055,000.00
Uncollected earnings (partly estimated).....	105,245.73	Fund for redemption of subsidy bonds.....	56,310.00
Accounts receivable.....	96,372.02	Accrued interest on bonds.....	73,798.69
Sinking fund.....	1,514,821.58	Isthmus drafts unrepresented.....	31,853.73
Cash on hand in New York.....	188,975.32	Overdue coupons.....	3,300.00
Cash on hand in London.....	28,458.57	Unclaimed dividends.....	149.00
Cash on hand in Isthmus agency.....	11,479.33	Balances due deceased or missing employees.....	894.70
Due from Isthmus agency.....	23,177.24	Due department of Panama.....	18,750.00
General European agents.....	3,838.39	Due connecting companies.....	26,203.90
General agents, New York.....	1,190.88	Accounts payable.....	702.40
General agents, San Francisco.....	177.06	Miscellaneous accounts unpaid.....	6,914.24
Accrued interest on deposits.....	1,261.09	Due sinking fund.....	158,911.99
Advance of subsidy to Republic of Colombia.....	2,055,000.00	Corrected surplus, December 31, 1893.....	1,797,884.04
General mortgage 7 per cent sterling bonds in Treasury.....	471,000.00	Addition to surplus for year 1894..	87,292.65
Advances to Panama Railroad Company's steamers.....	211,229.62		
	15,317,965.34		15,317,965.34
To surplus December 4, 1894.....	1,885,176.69		

E. A. DRAKE, *Secretary.**Treasurer's statement.*

DECEMBER 31, 1894.

CURRENT ASSETS.

Cash in bank, New York.....	\$63,795.96
Cash in bank, London (£5,867 14s. 11d. at \$4.85, the company's rate).....	28,458.57
Cash in hands of agents.....	16,685.16
Deposited with trust companies.....	125,000.00
Uncollected earnings (partly estimated).....	105,245.73
Petty cash.....	179.36
Accrued interest on deposit.....	1,261.09
Coal and supplies on hand.....	117,801.54
Republic of Colombia for advance of subsidy.....	2,055,000.00
Miscellaneous accounts uncollected.....	60,507.78
Due from Isthmus agency.....	23,177.24
	2,597,112.43

CURRENT LIABILITIES.

Isthmus drafts.....	\$31,853.73
Sinking fund.....	158,911.99
Coupons not presented.....	3,300.00
Accrued interest on bonds.....	73,798.69
Due department of Panama.....	18,750.00
Six per cent subsidy bonds.....	2,055,000.00
	2,341,614.41
Excess of assets.....	255,498.02
Surplus December 31, 1894, as per balance.....	1,885,176.69
Corrected surplus December 31, 1893, as per balance.....	1,797,884.04
Increase of surplus.....	87,292.65

ERNEST L. OPPENHEIM, *Treasurer.*

STATEMENT OF BONDED INDEBTEDNESS AND SINKING FUND.

DECEMBER 31, 1894.

The bonded indebtedness of the company consists of:

First. 4,000 seven per cent sterling bonds of £200 each, amounting to £800,000 (say \$4,000,000), of which 2,989 were issued October 10, 1867, and fall due October 10, 1897. The remaining 1,011 were issued on the 10th of October, 1892, and fall due on the 10th of October, 1897, but by resolution of the board of directors the holder is given the option of having them extended for ten years, at 5 per cent per annum, to the 10th day of October, 1907, the company reserving to itself the right of redemption at 105 and accrued interest of such extended bonds at any date subsequent to the 10th day of October, 1902. Of this latter issue 471 bonds are in the company's treasury.

To meet this bonded indebtedness the company has the following sinking fund:

663 Panama seven per cent general mortgage sterling bonds, valuation.....	\$663,000.00
352 Panama six per cent subsidy bonds, valuation.....	352,000.00
100 six per cent railway mortgage bonds, cost.....	101,080.00
270 five per cent railway mortgage bonds, cost.....	239,829.59
	<hr/>
	1,355,909.59
Due by Panama Railroad Company	158,911.99
	<hr/>
	1,514,821.58

Second. 2,055 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$2,055,000, were issued November 1, 1880, and fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1906, the same to be applied by the company, first, to the payment of the interest, and second, as a cumulative sinking fund, for the redemption of the principal; the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid in November 1 after each drawing, and thereby redeeming the whole issue in 1908.

ERNEST L. OPPENHEIM, *Treasurer.*

[Extracts from Report of the Panama Railroad Company for 1895.]

NEW YORK, *March 25, 1896.*

TO THE PRESIDENT AND BOARD OF DIRECTORS
OF THE PANAMA RAILROAD COMPANY,
New York.

GENTLEMEN: The following report of the operations for the year ending December 31, 1895, and statements showing the financial condition of the company at the close of the year, are respectfully submitted.

The gross earnings and the total expenses of the railroad have been as follows:

Statement of earnings and expenditures.

	1895.	1894.	Increase.	Decrease.
EARNINGS.				
Colon to Panama:				
From freight.....	\$711,745.31	\$574,807.91	\$136,937.40	
From treasure.....	8,283.06	6,516.62	1,766.44	
From mails.....	31,790.68	29,648.53	2,142.15	
From passengers.....	38,696.01	31,431.54	7,264.47	
	<hr/>	<hr/>	<hr/>	<hr/>
	790,515.06	642,404.60	148,110.46	
Panama to Colon:				
From freight.....	471,174.97	370,582.42	100,592.55	
From treasure.....	10,622.40	10,801.56		\$179.16
From mails.....	5,581.46	4,835.30	746.16	
From passengers.....	33,741.77	27,909.89	5,831.88	
	<hr/>	<hr/>	<hr/>	<hr/>
	521,120.60	414,129.17	106,991.43	

Statement of earnings and expenditures—Continued.

	1895.	1894.	Increase.	Decrease.
EARNINGS—continued.				
Miscellaneous receipts:				
Interest and exchange	\$21,036.53	\$12,952.59	\$8,083.94	.....
Lighterage	279,618.30	213,590.41	66,927.89	.....
Water supplied shipping	51,236.67	42,365.38	8,871.29	.....
Rental of property	22,742.06	19,190.77	3,551.29	.....
Ballast	92.91	.....	92.91	.....
Wharfage and light dues	16,441.75	14,624.00	1,817.75	.....
Telegraph	3,077.40	3,321.67	.....	\$244.27
Other items	659.36	777.03	.....	117.67
	394,804.98	306,821.85	87,983.13	.....
Total earnings	1,706,440.64	1,363,355.62	343,085.02	.....
EXPENDITURES.				
General expenses	97,978.69	86,626.34	11,352.35	.....
European and South American agency expenses	7,129.55	7,105.94	23.61	.....
Lost and damaged freight	4,891.33	2,657.94	2,233.39	.....
Drawback on Colombian produce	16,750.19	16,716.52	33.67	.....
Republic of Colombia, for nonextension of road	10,000.00	10,000.00	.....	.....
Operating expenses on the Isthmus:				
Superintendence	52,422.21	57,389.74	.....	4,967.53
Conducting transportation	157,688.94	148,966.21	8,722.73	.....
Supply department	6,656.68	16,567.26	.....	8,911.58
Lighterage	114,655.72	90,841.47	23,814.25	.....
Wharves	54,543.36	33,377.32	21,166.04	.....
Real estate	10,231.92	9,808.70	423.22	.....
Repairs, Colon buildings	45,409.01	30,210.21	15,198.80	.....
Colon station	57,485.09	52,689.73	4,845.36	.....
Panama station	91,397.15	80,377.66	11,019.49	.....
Maintenance of way	53,888.02	64,846.76	.....	10,958.74
Telegraph	1,713.65	2,048.17	.....	334.52
Taboga waterworks	33,424.77	29,450.25	3,974.52	.....
Freight on stores	8,554.00	3,532.70	21.30	.....
	819,819.28	742,162.92	77,656.36	.....
Advances to steamers:				
Colombian Line	62,780.75	43,565.52	19,225.23	.....
Panama Line	239,697.95	167,664.10	72,033.85	.....
Steamer Saturn, voyage San Francisco to New York	31,269.71	.....	31,269.71	.....
	333,758.41	211,229.62	122,528.79	.....
Total operating expenses	1,153,577.69	963,892.54	200,185.15	.....
Earnings over operating expenses	552,862.95	409,463.08	142,899.87	.....
Deduct fixed charges:				
Subsidy to Republic of Colombia	25,000.00	25,000.00	.....	.....
Redemption of subsidy bonds	102,000.00	97,000.00	5,000.00	.....
Interest on subsidy bonds	123,300.00	129,120.00	.....	5,820.00
Interest on sterling bonds	239,619.10	239,619.10	.....	.....
	489,919.10	490,739.10	.....	820.00
Earnings over fixed charges	62,943.85	.....	143,719.87	.....
Fixed charges over earnings .....	.....	80,776.02	.....	.....

Compared with those of the preceding year, the total gross earnings for 1895 increased \$343,085.02, or 25.16 per cent, and the operating expenses, \$200,185.15, or 21 per cent, making an increase in net earnings of \$142,899.87.

The increase in gross earnings is very gratifying. It was general upon all classes of earnings, but bore more especially upon freight traffic and lighterage. The increase from freight traffic was \$237,529.95, or 25.12 per cent; from lighterage, \$65,927.89, or 30.87 per cent; in earnings from passenger traffic, \$13,096.35 or 22.07 per cent; in earnings from interest and exchange, \$8,083.94, or 62.41 per cent; in earnings from water supplied shipping, \$8,871.29, or 20.94 per cent; in earnings from rental of property, \$3,551.29, or 18.50 per cent.

FREIGHT TRAFFIC.

The following table will show comparatively the freight transported over the Panama Railroad during the years 1895 and 1894:

Years ending December 31—	1895.	1894.	Increase.
Tons carried west bound:			<i>Per cent.</i>
Local	16,993	15,660	8.51
From Europe to all destinations	81,686	62,536	30.62
From New York to all destinations	51,306	42,885	19.64
Total	149,987	121,081	23.87
Tons carried east bound:			
Local	4,331	2,796	54.96
From all destinations to Europe	69,005	60,824	13.45
From all destinations to New York	47,740	31,976	49.30
Total	121,076	95,595	26.65
Total east bound and west bound.....	271,063	216,676	25.10

Compared with the freight business for 1894, the number of tons moved in 1895 shows an increase of 54,387, or 25.10 per cent, and the freight earnings an increase of \$237,529.95, or 25.12 per cent.

Of the total tonnage moved, 55.33 per cent was west-bound traffic, and 44.67 per cent east-bound traffic.

The through traffic amounted to 92.13 per cent of the total number of tons moved.

TABLE B.—*Treasurer's statement.*

DECEMBER 31, 1895.

CURRENT ASSETS.

Cash in banks, New York	\$77,782.87
Cash in banks, London (£7,935 2s. 10d. at \$4.85, company's rate)	38,485.44
Cash in hands of agents	22,475.27
Petty cash	118.20
Deposited with trust companies	85,000.00
Uncollected earnings (partly estimated)	84,581.31
Coal and supplies on hand	141,597.97
Accrued interest on deposits	108.06
Accounts receivable	127,608.58
Advance of subsidy to Republic of Colombia	1,953,000.00
	<u>2,530,757.70</u>

CURRENT LIABILITIES.

Isthmus drafts not presented	\$30,770.75
Coupons not presented	3,945.80
Subsidy bonds not presented	3,000.00
Accrued interest on bonds	72,778.69
Miscellaneous accounts unadjusted	57,872.42
Due connecting companies	37,082.66
Due department of Panama	21,875.00
Due sinking fund	374,737.59
Six per cent subsidy bonds	1,953,000.00
	<u>2,555,062.91</u>
Excess of liabilities	<u>24,305.21</u>
Corrected surplus December 31, 1894, as per balance	1,884,158.41
Surplus December 31, 1895, as per balance	<u>1,644,145.47</u>
Decrease of surplus	240,012.94

S. DEMING, *Treasurer.*

TABLE C.—*Statement of bonded indebtedness and sinking fund.*

DECEMBER 31, 1895.

The bonded indebtedness of the company consists of:

First, 4,000 seven per cent sterling bonds of £200 each, amounting to £800,000 (say \$4,000,000), of which \$2,989 were issued October 10, 1867, and fall due October 10, 1897. The remaining 1,011 were issued on the 10th of October, 1892, and fall due on the 10th of October, 1897, but by resolution of the board of directors the holder is given the option of having them extended for ten years, at 5 per cent per annum, to the 10th day of October, 1907, the company reserving to itself the right of redemption at 105 and accrued interest of such extended bonds at any date subsequent to the 10th day of October, 1902. Of this latter issue 471 bonds are in the company's treasury.

To meet this bonded indebtedness the company has the following sinking fund:

693 Panama seven per cent general mortgage sterling bonds, valuation...	\$693,000.00
326 Panama six per cent subsidy bonds, valuation.....	326,000.00
100 six per cent railway mortgage bonds, cost.....	101,080.00
120 five per cent railway mortgage bonds, cost	109,120.84
	<hr/>
	1,229,200.84
Due by Panama Railroad Company	374,737.59
	<hr/>
	1,603,938.43

Second, 1,953 six per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$1,953,000, issued November 1, 1880, fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest, and second, as a cumulative sinking fund, for the redemption of the principal; the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

S. DEMING, *Treasurer.*

[Extracts from the forty-seventh annual report of the Panama Railroad Company.]

NEW YORK, *March 25, 1897.*

To the Stockholders of the Panama Railroad Company.

GENTLEMEN: I now submit for your consideration the report of the vice-president and general manager, with accompanying statements of earnings and expenditures for the calendar year 1896, accompanied by the treasurer's condensed balance sheet.

Despite the fact that the tendency of all transportation rates for the past twelve months has been downward, and that the earnings from traffic of all kinds moved over our route show a loss of \$110,061.36, the company, owing to very important reductions in the cost of operation of the railroad and of the company's steamship line, and to the owning and operation of steamers between New York and Colon, has been able to more than counterbalance all unfavorable influences. The result of fifteen months' operation of the contract of December 16, 1895, with the Pacific Mail Steamship Company entirely supports the estimate made of its value to the company.

The effort previously made to establish a so-called Government telegraph line across the Isthmus was revived during the year, and has been met by a vigorous protest to the Colombian Government by the company, and has accordingly been suspended.

A law department has been created and the entire legal affairs of the company placed in the hands of eminent counsel.

All of the company's officers and employees who are responsible for the safe handling of its funds have been bonded in a responsible surety company in New York.

The thirty year 7 per cent sterling mortgage bonds of the company, originally issued to the amount of £1,000,000 (\$5,000,000), mature on October 10, 1897.

Although there was no sinking fund obligation which required it so to do, the company from motives of prudence voluntarily set aside surplus earnings, from time to time, for the purpose of meeting the bonds at maturity, and has thus voluntarily

reduced the balance, for which provision is to be made, to the comparatively small sum of £537,600, as will be seen from the following statement, viz:

Original sterling bond issue.....	£1,000,000
Bonds of this issue heretofore redeemed or now in the hands of the company, acquired from time to time and ready for cancellation.....	462,400
	<hr/> 537,600
For the retirement of which the company holds United States Government bonds and other securities set aside from time to time for this purpose in its voluntary sinking fund	187,800
	<hr/>
Balance December 31, 1896.....	£349,800
To which will also be applicable:	
Interest to accrue on bonds in voluntary sinking fund to October 10, 1897, and estimated net earnings to July 1, 1897, amounting to.....	50,400
	<hr/>
Leaving to be provided for at maturity of bonds (after application of foregoing).....	299,400

There are but 2,688 of these bonds now in the hands of the public.

For the purpose of meeting said balance of £299,400, and of making prudent provision for the present improvements of terminals and service, as well as for the future development and requirements of the company, a new issue of twenty year $4\frac{1}{2}$ first mortgage sinking fund gold bonds will be made by the company for the present amount of \$2,000,000, but limited in the aggregate to \$4,000,000, and reduced in interest rate to $4\frac{1}{2}$ per cent per annum. By this reduction in the principal, and also in the rate of interest, the company has reduced its annual fixed charge over \$100,000.

From the sale of \$2,000,000 of the new $4\frac{1}{2}$ first mortgage sinking fund gold bonds about to be issued, and with its voluntary cash fund the company will have sufficient to retire the outstanding sterling mortgage bonds at maturity and leave a surplus of half a million.

This new mortgage will constitute the only mortgage indebtedness of the company.

The company has outstanding \$1,846,000 subsidy sinking fund bonds, finally maturing November 1, 1910, before which time, however, they will have been retired.

These last-mentioned bonds are not secured by a mortgage, and do not represent any increased indebtedness. They were originally \$3,000,000, and were merely issued in the year 1880, at the request of the Colombian Government, to capitalize for the Government for twenty-seven years (and put in the form of negotiable bonds for the utilization of the Government) the annual subsidy of \$225,000 provided for by the concessions. The company draws and pays annually an amount of these bonds which, with the interest on the whole outstanding issue, equals the cash subsidy of \$225,000, which it would otherwise pay directly to the Government; but this does not involve any interest charge or additional payment, indebtedness, or burden upon this company. The original issue was \$3,000,000, but by annual drawings, as indicated, the company has paid and cancelled \$1,154,000. The interest payment is made by the company out of the \$225,000 due the Government, and bonds are then drawn annually for the difference up to the \$225,000, and in this way the issue will be annually reduced and retired before maturity, when the payment of the annual subsidy direct to the Government will be again renewed.

The fixed charges of the company are only the fixed annual concessionary charge, \$250,000, and interest on the present issue of bonds.

To meet the requirements of the developing traffic of the Pacific coast with the United States and Europe, and to abolish the system of lighterage service in the bay of Panama which has prevailed for nearly fifty years, and to introduce the most improved methods of loading, unloading, and handling traffic, the company has contracted for the construction of a great pier, harbor, and other like improvements and facilities in the bay of Panama, permitting the loading and unloading of cargoes directly from vessel to cars. These improvements are now under way and will cost about \$1,000,000.

The large savings in expenses of operation of direct shipment over the lighterage (involving double handling of cargoes) is self-evident; while the increase in business from the shortening of the voyage at least seven days, freedom from delays, interruptions and accidents, and general facilitation of business, give assurance that the annual cash results from these improvements will be far in excess of the annual interest charge represented thereby.

Additions to the company's fleet of steamers, the establishment of grain elevators and warehouses on the Isthmus, and other equally important improvements are also contemplated in the early future. These latter additions and improvements will involve an expenditure during the next few years of about \$700,000.

Although the company does not design the issue at present of more than \$2,000,000 of said bonds, provision for the future in the completion of the remunerative improvements above suggested, and others contemplated, have made it prudent to provide for an ultimate issue in the future to the aggregate amount of \$4,000,000, but under very strict conditions upon further issues to insure the security and protection both of the bondholders and the company.

The railroad and its equipment, as well as the steamships, tugs, lighters, and other property of the company, have been brought to a high state of efficiency.

While thus presenting the record of the year just closed, a few observations of a general nature may be useful.

The concessions from the United States of Colombia, granted originally in 1850, run to A. D. 1966, and have continued for forty-seven years unimpeached and unquestioned. They are of great value and represent as well a large cash investment fully discharged, and leaving payable only the annual subsidy of \$250,000. By the terms of its concession all property of the company is entirely exempt from taxation, and the value of this will be appreciated.

The corporation exists under perpetual and special charter granted by the legislature of the State of New York April 7, 1849, and covers powers to operate steamship as well as railroad lines under these concessions and otherwise.

The net earnings of the company for the past five years have averaged \$614,781.69 per annum. The net earnings for the past year are \$1,035,303.63. The years of 1893, 1894, and 1895 were the years of aggressive competition by this company to secure and establish the firm position it attained in 1895.

During the ten years prior to 1893 the company paid to its stockholders an average of 7.2 per cent per annum in dividends, but for the past four years has found it more advantageous (under the liberal encouragement of its stockholders) to apply the net earnings to the purchase of three large steamers, and otherwise for the improvement and protection of its increasing transportation interests. The year that has just closed shows 7 per cent net earned on the \$7,000,000 of stock after payment of everything due, which will not be distributed to stockholders.

The results of operation during the past four years have been of especial value and interest to security holders.

On the Atlantic side.—The company has completely established its supremacy. It established its own steamship line between New York and the Isthmus of Panama, and this is now the only line between said points. The company owns and has fully paid for the three steamers in question, aggregating 8,193 tons burthen, and operating in said regular service.

It has strengthened its connections and traffic arrangements with steamship lines running between Colon and the principal ports of Great Britain, France, Belgium, Germany, Spain, and Italy, thus connecting all European points, most of which it has held for over thirty years.

On the Pacific side.—It has secured its liberty after next year from the restrictive contract made in 1872, excluding it from Central America. That most profitable country thus will again opened to the company after 1898.

It has established contracts which secure regular and effective service and connections between Panama and the western coast of the continent north to San Francisco and south to Valparaiso, Chile.

It is gratifying to contemplate that your company has continued without cessation or financial default for a single moment for the almost half century of its existence.

I respectfully refer you to the accompanying reports for further particulars.

Respectfully submitted.

J. EDWARD SIMMONS, *President.*

PANAMA RAILROAD COMPANY,
New York, March 24, 1897.

To the President of the Panama Railroad Company.

SIR: I respectfully submit the following report of the business and operation of the company for the year ending December 31, 1896, and of the condition of its property and finances at the close of the year.

The operations of the year show the following results:

Statement of earnings and expenditures.

	1896.	1895.	Increase.	Decrease.
EARNINGS.				
Railroad:				
Colon to Panama—				
Freight	\$704,992.89	\$711,745.31		\$6,752.42
Treasure	3,803.11	8,283.06		4,479.95
Mails	36,638.52	31,790.68	\$4,847.84	
Extra baggage	a 10,540.11	10,540.11		
Passengers	50,287.72	38,696.01	11,591.71	
	806,262.35	790,515.06	15,747.29	
Panama to Colon—				
Freight	322,356.74	471,174.97		148,818.23
Treasure	17,209.91	10,622.40	6,587.51	
Mails	5,057.41	5,581.46		524.05
Extra baggage	a 6,236.79	6,236.79		
Passengers	44,451.10	33,741.77	10,709.33	
	395,311.95	521,120.60		125,808.65
Total earnings of railroad	1,201,574.30	1,311,635.66		110,061.36
Steamship lines:				
Panama Railroad Steamship Line—				
Freight	468,878.60	388,545.49	150,215.35	
Treasure	11,261.36			
Mails	55,862.66			
Extra baggage	2,758.22			
Passengers	140,673.14	52,207.73	88,465.41	
Miscellaneous	b 11,770.80		11,770.80	
	691,204.78	440,753.22	250,451.56	
Temporary Pacific Line—				
Freight	31,000.05	292,849.32		261,849.27
Total earnings of steamship lines	722,204.83	733,602.54		11,397.71
Joint railroad and steamship receipts—				
Interest and exchange	9,853.87	21,036.53		11,182.66
Lighthouse	210,232.01	279,518.30		69,286.29
Water supplied shipping	60,469.69	51,236.67	9,233.02	
Rental of property	21,666.76	22,742.06		1,075.30
Wharfage, storage, and light dues	37,225.71	16,441.75	20,783.96	
Telegraph	4,436.70	3,077.40	1,359.30	
Miscellaneous	c 3,477.64	752.27	2,725.37	
	347,362.38	394,804.98		47,442.60
Total earnings	2,271,141.51	2,440,043.18		168,901.67
EXPENDITURES.				
Operating expenses of railroad:				
General expenses on Isthmus	40,497.65	59,077.89		18,580.24
Conducting transportation	228,335.10	311,838.83	5,712.19	29,538.51
Maintenance of equipment	53,965.22			
Maintenance of way and structure	59,600.21	53,888.02		
	382,398.18	424,804.74		42,406.56
Operating expenses of steamship lines:				
Panama Railroad Steamship Line—				
Steamer expenses	351,216.74	391,214.62		39,997.88
Replacement of boilers and special repairs	2,199.96		2,199.96	
Agency expenses	102,253.42	100,329.35	1,924.07	
Charter of steamers	13,500.00	12,000.00	1,500.00	
	469,170.12	503,543.97		34,373.85

a In 1895 extra baggage earnings were included in freight earnings.

b In 1895 these receipts were included in receipts from freight.

c This item includes \$2,059.69 for switching. In 1895 these receipts were deducted from transportation expenses.

Statement of earnings and expenditures—Continued.

	1896.	1895.	Increase.	Decrease.
EXPENDITURES—continued.				
Operating expenses of steamship lines.—Cont'd.				
Temporary Pacific Line—				
Steamer expenses.....	\$24,440.07	\$491,259.67		\$466,819.60
Agency expenses.....	3,055.67	41,287.60		38,231.93
Steamer Saturn, voyage San Francisco to New York.....		31,269.71		31,269.71
	27,495.74	563,816.98		536,321.24
Total for steamship lines.....	496,665.86	1,067,360.95		570,695.09
Joint railroad and steamship expenses—				
General expenses.....	102,578.68	97,978.69	\$4,599.99	
Foreign agency expenses.....	15,307.49	7,129.55	8,177.94	
Losses on cargo.....	6,553.63	4,891.33	1,662.30	
Drawback on Colombian produce.....	13,643.78	16,760.19		3,106.41
Republic of Colombia for nonextension of road.....	10,000.00	10,000.00		
Lighterage.....	116,863.18	114,655.72	2,207.46	
Docks and wharves.....	45,849.50	54,543.36		8,693.86
Real estate.....	12,602.53	10,281.92	2,370.61	
Repairs Colon buildings.....		45,409.01		45,409.01
Taboga waterworks.....	33,375.05	33,424.77		49.72
	356,773.84	395,014.54		38,240.70
Total expenditures.....	1,235,837.88	1,887,180.23		651,342.35
Earnings over operating expenses.....	1,035,303.68	562,862.95	482,440.68	
Deduct fixed charges—				
Subsidy to Republic of Colombia.....	25,000.00	25,000.00		
Redemption of subsidy bonds.....	107,820.00	102,000.00	5,820.00	
Interest on subsidy bonds.....	117,180.00	123,300.00		6,120.00
Interest on sterling bonds.....	239,619.10	239,619.10		
	489,619.10	489,619.10		300.00
Net income.....	545,684.53	62,943.85	482,740.68	

Compared with those of the preceding year, the total gross earnings for 1896 show a decrease of \$168,901.67, or 6.92 per cent, and the operating expenses a decrease of \$651,342.35, or 34.51 per cent, making an increase in net earnings of \$482,440.68, or 87.26 per cent.

Taking into consideration the severe business depression which prevailed during a large portion of the year, the poor coffee crop in Central America, and the strong competition between transportation interests, these results may be considered very satisfactory.

EARNINGS.**RAILROAD.**

The decrease in total earnings of the railroad was \$110,061.36, or 8.39 per cent, and results entirely from freight. There are increases on all other classes of earnings.

The following table will show, comparatively, the freight tonnage over the railroad during the years 1896 and 1895:

	Year ending December 31, 1896.	Year ending December 31, 1895.	Increase.	Decrease.
	Tons.	Tons.	Per cent.	Per cent.
West bound.....	180,476	149,967	20.33	
East bound.....	98,721	121,076		18.46
Total.....	279,197	271,063	3.00	

The gross earnings per ton moved on the road compare as follows:

	Year end- ing De- cember 31, 1896.	Year end- ing De- cember 31, 1895.	Decrease in 1896.
West bound	\$3.91	\$4.74	Per cent. 17.61
East bound	3.26	3.89	16.19
Average	3.68	4.36	15.99

It will be seen by Table No. 1 that the decrease on freight tonnage bears more particularly on the business between the two coasts of the United States; this important decrease is due to the depression already referred to.

The decrease from the west coast of America to Europe was more especially caused by a largely reduced coffee crop in Central America in 1896.

As will be seen by the following statement the east-bound traffic has fallen off on almost all classes of freight:

	1896.	1895.	Increase.	Decrease.
Products of agriculture:			<i>Per cent.</i>	<i>Per cent.</i>
Cotton	bales 460	1,805		74.51
Cocoa	bags 139,078	178,776		22.20
Coffee	do 609,655	827,976		26.37
Indigo	zeroons 7,123	8,891		19.89
Ivory nuts	bags 32,499	23,962	36.63	
Rubber	bales 10,596	11,737		9.72
Tobacco	do 1,767	1,699	4.00	
Balsam	cases 739	640	15.47	
Plants	do 23	142		83.80
Coca	bales 3,480	1,537	126.41	
Sarsaparilla	do 9		100.00	
Straw	do 245	71	245.07	
Barley	bags	46,664		100.00
Beans	do 20,821	40,434		48.50
Mustard seed	do 5,944	28,950		79.47
Tea	chests	117		100.00
Products of animals:				
Hides	single 115,473	131,489		12.18
Hides and skins	bundles 5,732	7,799		26.50
Wool	bales 15	671		97.76
Leather	do 337	928		63.68
Glue	barrels 250	476		47.47
Products of mines:				
Ore	bags 4,058	3,548	14.38	
Lead	pigs 2,390	9,356		74.45
Products of the forest:				
Bark	bales 3,146	6,211		49.35
Mahogany, logs	tons 214	666		67.87
Manufactures:				
Sugar	bags 1,004	5,321		81.13
Iodine	barrels 3,414	1,019	235.03	
Hats	zeroons 221	237		6.75
Quicksilver	flasks	10,600		100.00
Wine	barrels and casks 23,759	56,784		58.15
Rags	bales 1,528	3,796		59.80
Borax	boxes 36,856	21,893	66.06	
Bone dust	bags	14,905		100.00
Canned goods	cases 73,370	234,773		68.75
Asphaltum	barrels 1,227	2,019		39.22
Antimony	do	10		100.00
Treasure	packages 8,027	4,964	61.70	
Miscellaneous	do 2,333	6,795		65.66

The increase in tonnage from Europe and New York to the west coast is due to new agreements made with the South Pacific and Central American carriers and to reductions of rates to meet Magellan competition.

Business on the Isthmus of Panama has been more active than in 1895, which accounts for the increase in local freight between Colon and Panama.

Compared with the freight business of 1895, the total tonnage moved over the road in 1896 shows an increase of 8,134 tons, or 3 per cent, and the freight earnings a decrease of \$138,793.75, or 11.73 per cent.

Of the total tonnage moved, 64.64 per cent was west-bound traffic and 35.36 per cent east bound. In 1895 these proportions were 55 and 45.

Through traffic amounted to 83.57 per cent of the total number of tons moved.

In 1896 there was an increase of earnings of \$2,107.56, or 11.15 per cent on treasure, and of \$4,323.79, or 11.57 per cent on mails.

Passenger earnings and passengers carried were as follows:

Classification.	Passengers carried.			Passenger earnings.		
	1896.	1895.	Increase.	1896.	1895.	Increase.
First class.....	6,293	5,283	<i>Per cent.</i> 19.12	\$35,360.15	\$29,949.90	<i>Per cent.</i> 18.06
Second class.....	97,464	57,806	68.60	59,378.67	42,487.84	39.75
Total.....	103,757	63,089	64.46	94,738.82	72,437.78	30.78

Average receipt per passenger.

Classification.	1896.	1895.	Increase.	Decrease.
First class:			<i>Per cent.</i>	<i>Per cent.</i>
Through.....	\$8.73	\$8.73	.....	.....
Local.....	2.69	2.55	5.49	.....
Second class:				
Through.....	4.18	4.49	.....	6.90
Local.....	.52	.59	.....	11.86

The increase of 40,668, or 64.46 per cent, in number of passengers carried, and of \$22,301.04, or 30.78 per cent, in earnings is due chiefly to local passengers.

First-class passengers carried increased 19.12 per cent in numbers and 18.06 per cent in earnings.

Second-class passengers carried increased 68.60 per cent in numbers and 39.75 per cent in earnings.

The average receipts for each first-class passenger was \$5.62 in 1896, as compared with \$5.67 in 1895, a decrease of 0.88 per cent, and for second-class passengers \$0.61 in 1896 as compared with \$0.73 in 1895, a decrease of 16.44 per cent.

The decrease in receipts from second-class passengers is chiefly due to special rates made for the transportation of emigrants across the Isthmus.

STEAMSHIP LINES.

Under the contract with the Pacific Mail Steamship Company, dated December 16, 1895, this company ceased the operation of the direct line of steamers it had operated between Panama and San Francisco, and the Pacific Mail Steamship Company discontinued the operation of its line of steamers between New York and Colon, which had run in competition with the Panama Railroad Company's line on the Atlantic.

This company's Pacific line was discontinued in the beginning of 1896, the last steamer arriving in San Francisco January 28; consequently its gross earnings in 1896 were only \$31,000.05, against \$292,849.32 in 1895, making an apparent decrease of \$261,849.27.

The gross earnings of the Atlantic line in 1896 were in excess of those of 1895 by \$250,451.56, or 56.82 per cent. Table No. 13 gives the detailed statement of monthly earnings.

JOINT RAILROAD AND STEAMSHIP RECEIPTS.

There is a decrease of \$47,442.60, or 12.02 per cent, on this class of receipts, which arises entirely from interest and exchange and upon lighterage.

The decrease in interest and exchange is the result of reduced sales at lower average rates of the company's drafts at Colon upon New York.

There is an increase of \$9,233.02 on water supplied to shipping. In 1895 a portion of the water sold was carried to the credit of transportation; in 1896 all the receipts from this source were included in earnings. Besides this change there has also been an increase in the sales of water.

The lighterage receipts in Panama Bay were unusually high in 1895, because of a more than average coffee crop. In 1896 the movement of coffee was smaller and, in addition, eastbound traffic was greatly reduced on account of general business depression, already referred to. There was also a large decrease in the lighterage of coal,

in consequence of the withdrawal of this company's line of steamers between Panama and San Francisco, and from the fact that the Pacific Mail Steamship Company had its coal brought by vessels to Panama instead of, as formerly, from Colon. These different causes account for the decrease of \$69,286.29 in lighterage receipts.

The following table will show the number of tons lightered during the years 1896 and 1895:

	1896.	1895.	Increase.	Decrease.
	Tons.	Tons.	Per cent.	Per cent.
Merchandise.....	162,661	197,896	.....	17.60
Lumber.....	819	811	2.87	.....
Coal.....	5,815	27,021	.....	78.48
• Total.....	168,795	224,727	.....	24.89

Until quite lately wharfage rates charged on the Isthmus to shipping were much lower than those of contiguous ports, while on the other hand the outlay for heavy repairs and replacements was largely in excess of receipts and involved a very serious loss. After proper and complete investigation the rates were reasonably increased, and receipts for wharfage, storage, and light dues in 1896 were in consequence \$20,783.96 in excess of corresponding receipts for 1895.

Revenue from rental of property shows a falling off of \$1,075.30, or 4.73 per cent. This is accounted for by the fact that a number of buildings on lots leased by the company, which were destroyed by the fire of March, 1896, in Colon, have not been rebuilt, and in consequence, rental, although due, has not yet been collected; and, further, by a reduction made by the company in rentals on certain streets to enable the poorer class of tenants to pay.

It is hoped that revenue from landed properties will improve during the coming year as the effects of the fire gradually wear off.

EXPENDITURES.

RAILROAD.

There is a total decrease of \$42,406.56 in operating expenses, or 9.98 per cent, while the decrease in earnings was 8.39 per cent. The reduction in expenses bears upon all departments except on maintenance of way and structures.

STEAMSHIP LINES.

As already stated, the company's Pacific line was in operation in January, 1896, only, as against the whole year in 1895. The important reduction of its expenses in 1896 over 1895 is thereby accounted for.

Although the receipts of the Atlantic steamship line were 56.82 per cent in excess of the earnings of 1895, the expenses of that line show a decrease of 6.83 per cent.

JOINT RAILROAD AND STEAMSHIP EXPENSES.

There is a decrease of \$38,240.70, or 9.66 per cent, in these expenses.

MAINTENANCE OF WAY AND STRUCTURES.

The roadway, buildings, and structures have been maintained in good condition during the year; 6,356 lignum-vitæ cross-ties were placed in the roadbed, and a portion of the line rebalasted.

The passenger depot at Colon has been removed to a more central part of the town and opposite the Company's freight house. The new location is not only more satisfactory to passengers, but will permit the enforcement of substantial economies.

Improvements and extensive repairs have been made to the wharves and piers. At Panama all the wharves are in excellent condition; the roof of the American pier alone still requires attention; when this is completed the Panama wharves will need only inexpensive repairs to keep them in good condition for some years to come.

Important repairs were instituted at the close of the year upon Colon piers Nos. 1, 2, and 4.

A high-level water tank has been erected in Colon to increase the water supply for the mechanical department, to give better protection against fires, and to furnish good drinking water to the company's numerous dwelling houses. The expense of this water tank and of the piping requisite to carry the water from Monkey Hill Springs, has been charged to construction account.

RAILROAD AND FLOATING EQUIPMENT.

The whole of the company's plant, engines, tenders, cars, machinery, tools, steamships, tugs, and lighters have been maintained in good working order and repair.

Two new steel freight lighters of 340 tons capacity were added to the floating equipment and their cost carried to construction account.

The following statement shows the number and character of the company's rolling stock:

	Locomotives.		Passenger cars.					Freight cars.		Miscellaneous.									
	Road engines.	Switch engines.	Special.	First class.	Second class.	Baggage.		Box.	Coal.	Flat.	Local express.	Wrecking.	Caboose.	Specific.	Water.	Stock.	Road department.	Moveable steam crane.	Steam pile driver.
Stock on December 31, 1896	26	11	5	8	16	7		580	186	183	27	3	5	2	9	9	2	1	1
December 31, 1895	27	11	5	8	16	7		564	186	188	27	3	5	2	9	9	2	1	1
Increase during the year								16		5									
Decrease during the year	1																		

The 16 new box cars were built with serviceable material taken from cars put out of service in past years. The expense of their reconstruction was charged to revenue.

The 5 missing flat cars were burned in the fire which destroyed a part of Colon on March 23, 1896. These cars will be rebuilt this year and the expense charged to revenue.

Engine No. 14, which was old and too weak, was dismantled, and its boiler used on the wharves at Panama. The value of this engine will be deducted from construction account.

The following statement shows the floating equipment of the company:

Name.	Gross tonnage.	Length.	Breadth.	Depth.	Hull.	Passenger accommodation.	
						Cabin.	Steerage.
		<i>Feet.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>			
Steamship Alliance	2,985	300	42 0	23 9	Iron	82	100
Steamship Advance	2,605	295	38 4	23 4	do	64	100
Steamship Finance	2,603	300	38 4	23 6	do	64	100
Tug Ancon	105	98	18 0	6 0	do		
Tug Bolivar	234	127	23 0	9 6	do		
Tug and water boat Balboa	79	100	14 0	7 6	do		
4 freight lighters	340	110	24 2	7 2	Steel		
14 freight lighters	230-300	110	24 0	6 6	Iron		
6 coal lighters	215	100	24 0	6 0	do		

Statistical statements will be found here appended concerning the freight and passenger traffic of the railroad and steamships, and also information as to the earnings and expenses.

ASSETS AND LIABILITIES.

Statement A herewith shows the financial condition of the company on December 31, 1896.

On December 31, 1895, the cost of the road and equipment amounted to \$10,077,375.01

On December 31 last it amounted to 10,076,576.12

Decrease..... 798.89

The changes have been as follows:

Additions:

Construction of high-level water tank at Colon and pipes to connect Monkey Hill Springs with reservoir..... 3,192.90

Construction of two steel lighters..... 24,393.35

27,586.25

Deduction:

Cost of tug <i>Alma</i> , dismantled and written off.....	\$28,385.14
Decrease as above	798.89
On December 31, 1895, the value of the company's real estate was ..	263,616.74
On December 31, 1896, it amounted to	266,116.74
Increase	2,500.00

—caused by the purchase of land at Bohio.

GENERAL REMARKS.

In the last annual report it was stated that "the finances of your company are in better condition than they have been for some years past, and your management is instituting rigid and thorough economies in every branch of the service, which will still more improve our position during the present year." These provisions have been largely realized, and this year the company's financial position is better than it has been for many years.

In 1896, \$374,737.59 were appropriated out of net earnings mainly to pay for the three steamers *Alliança*, *Finance*, and *Advance*.

In 1894 operating expenses were 69.93 per cent of gross earnings; in 1895, 61.63 per cent; in 1896, 53.94 per cent. In calculating percentages for 1895 and 1896, the earnings and expenses of the Panama Steamship Line were deducted from the totals; as this line was an emergency line, created for a given purpose, its expenses were at all times greater than its earnings, and that fact was clearly contemplated in advance, but the supremacy and independence gained thereby were the results sought for and attained. Had these figures not been deducted, the percentage for 1896 would have shown still more favorably.

During the year we have been free from serious accidents of any kind.

It is my agreeable duty to state that considering the depression of business in 1896, full credit should be given all the officers and employees whose continued good will and earnest cooperation have so largely contributed to these satisfactory results, and I here take great pleasure in cordially acknowledging my appreciation of their hearty efforts.

Respectfully submitted.

G. W. WHALEY,
Vice-President and General Manager.

TABLE NO. 1.—Number of tons of freight moved on the railroad.

FROM ALL POINTS TO ALL POINTS.

	1896.	1895.	Increase.	Decrease.
	Tons.	Tons.	Per cent.	Per cent.
Colon to Panama:				
From New York to San Francisco	22,565	27,000		16.43
From New York to Panama, South Pacific, Central America, and Mexico.....	28,852	24,308	18.69	
From Europe to Panama, South America, Central America, Mexico, and San Francisco.....	92,137	81,686	12.79	
From Colon to Panama (local):				
Commercial freight.....	27,783	16,993	63.49	
Company's freight.....	99,139		100.00	
Total.....	180,476	149,987	20.33	
Panama to Colon:				
From San Francisco to New York	13,098	30,432		56.96
From San Francisco to Europe.....		2,062		100.00
From South Pacific, Central America, Mexico, and Panama to New York.....	20,603	17,308	19.03	
From South Pacific, Central America, Mexico, and Panama to Europe.....	56,071	66,943		16.25
From Panama to Colon (local):				
Commercial freight.....	3,436	4,331		20.66
Company's freight.....	95,513		100.00	
Total.....	98,721	121,076		18.46
Total eastbound and westbound.....	279,197	271,063	3.00	

^aIn 1895 the company's freight was not included in the tonnage

TABLE NO. 1.—Number of tons of freight moved on the railroad—Continued.

COUNTRIES OF ORIGIN AND DESTINATION.

	1896.	1895.	Increase.	Decrease.
	<i>Tons.</i>	<i>Tons.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Colon to Panama:				
For Panama	47,568	24,060	97.70	.....
For Central America	65,551	62,083	5.59	.....
For South Pacific	89,887	29,388	84.04	.....
For San Francisco	24,411	30,213	.....	19.21
For Mexico	3,559	4,248	.....	16.25
Total	180,476	149,987	20.38	.....
Panama to Colon:				
From Panama	22,688	6,983	227.25	.....
From Central America	39,779	55,445	.....	28.25
From South Pacific	21,178	24,742	.....	14.42
From San Francisco	13,108	32,494	.....	59.67
From Mexico	1,978	1,462	85.29	.....
Total	98,721	121,076	.....	18.46
Total eastbound and westbound	279,197	271,063	3.00	.....

TABLE A.—Balance sheet, December 31, 1896.

RESOURCES.

Cost of road and equipment		\$10,076,576.12
Steamers <i>Alliance, Finance, and Advance</i>		336,655.50
Real estate at Isthmus		266,118.74
Sinking fund		1,631,988.12
Bonds in the Treasury—		
General mortgage 7 per cent sterling bonds (unissued)	\$471,000.00	
General mortgage 7 per cent sterling bonds (purchased)	150,574.29	
On deposit with financial agent for redemption of subsidy bonds		621,574.29
Advance of subsidy to Republic of Colombia ^a		1,846,000.00
Current assets—		
Cash in banks, New York	132,385.59	
Cash in banks, London	35,602.19	
Cash on hand, Isthmus Agency	17,737.49	
Cash in hands of agents	2,722.39	
Coal and supplies on hand	92,847.68	
Uncollected earnings	67,548.39	
Due from connecting companies	83,119.20	
Due from United States Government	18,982.87	
Due from companies and individuals	54,459.89	
Due from voluntary sinking fund	61.86	
Accrued interest on deposits	753.78	
Accrued interest on securities owned	1,398.73	
Unadjusted accounts	40,404.32	
		548,061.37
		15,842,972.14

LIABILITIES.

Capital stock		7,000,000.00
General mortgage 7 per cent sterling bonds ^b		4,000,000.00
Subsidy 6 per cent bonds ^a		1,846,000.00
Voluntary sinking fund for redemption of 7 per cent sterling bonds		1,631,988.12
Subsidy bonds drawn, not presented for payment		16,000.00
Accrued interest on bonds:		
Fund for redemption of subsidy bonds	\$66,495.00	
Interest on subsidy bonds	18,460.00	
Interest on general mortgage bonds	53,248.68	
Department of Panama	21,875.00	
Republic of Colombia	1,666.07	
		161,745.35

^a1,846 6 per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$4,846,000, issued November 1, 1880, fall due November 1, 1910.

To meet this bonded indebtedness \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company: First to the payment of the interest, and second, as a cumulative sinking fund for the redemption of the principal, the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1, after each drawing, and thereby redeeming the whole issue in 1908.

^bOriginal issue 5,000, of which 1,000 were subsequently taken up and canceled. Leaving 4,000 7 per cent sterling bonds of £200 each, amounting to £800,000 (say \$4,000,000), of which 2,999 were issued

Current liabilities:	
Isthmus drafts not presented	\$19,048.70
Coupons not presented	1,669.60
Due connecting companies	34,467.14
Audited vouchers	23,944.79
Unclaimed dividends	307.00
Due deceased or missing employees	1,271.66
Miscellaneous accounts unadjusted	19,073.99
	<hr/>
Balance to credit of profit and loss	\$99,772.88
	587,466.79
	<hr/>
	16,342,972.14

S. DREYING, Treasurer.

[Extracts from the forty-eighth annual report of the Panama Railroad Company.]

NEW YORK, March 24, 1898.

To the Stockholders of the Panama Railroad Company:

GENTLEMEN: I respectfully submit for your consideration the report of the vice-president and general manager, with accompanying statements of earnings and expenditures, for the calendar year 1897, and the treasurer's balance sheet and transcript of profit and loss account.

In addition to the complete recital of the company's business in 1897, furnished by attached reports, I need only refer:

First. To the satisfactory manner in which the company's 7 per cent £1,000,000 (\$5,000,000) loan, due October 10, 1897, was redeemed at maturity; and

Second. To the progress made during the year in the construction of the projected port and pier at La Boca under a contract which was executed with the Panama Canal Company, dated February 12, 1897.

Under authority of the resolutions adopted at your annual meeting of April 5, 1897, the company has since created a new first mortgage of \$4,000,000, and has issued its twenty-year 4½ per cent first mortgage sinking fund gold bonds, limited in the aggregate to \$4,000,000, and of which amount \$2,000,000 were disposed of in New York upon advantageous terms; with the proceeds, together with the amount realized from the disposition of assets which had been accumulated for the purpose in the company's funds, the £1,000,000 7 per cent sterling loan, which matured October 10, 1897, was liquidated.

As the result of these transactions the company's outstanding mortgage liability is reduced to \$2,000,000.

In accordance with the contract with the Panama Canal Company, the construction of a new port and pier at La Boca has been rapidly progressed until the estimated cost of construction, covered by the original contract, viz, 5,000,000 francs, or about \$962,000, had been entirely expended.

October 10, 1887, and fall due October 10, 1897. The remaining 1,011 were issued on the 10th of October, 1892, and fall due on the 10th of October, 1897; but, by resolution of the board of directors, the holders of these 1,011 bonds were given the option of extension for ten years at 5 per cent per annum, to the 10th day of October, 1907, the company reserving to itself the right of redemption at 105 and accrued interest of such extended bonds at any date subsequent to the 10th day of October, 1902. All of this latter issue, however, is in the company's treasury and voluntary sinking fund.

To meet this bonded indebtedness of £800,000 the company has the following:

Voluntary sinking fund—		
693 Panama 7 per cent general mortgage sterling bonds	\$693,000.00	
312 Panama 6 per cent subsidy bonds	312,000.00	
177 United States 4 per cent registered bonds 1925, market value, December 31	212,400.00	
257 United States 4 per cent registered bonds 1907, market value, December 31	282,700.00	
50 Oregon improvement first mortgage bonds, market value, Decem- ber 31	45,000.00	
120 Northern Pacific 5 per cent consolidated mortgage bonds, market value, December 31	65,700.00	
50 Northern Pacific and Montana first mortgage bonds, market value, December 31	21,250.00	
	<hr/>	
	1,632,050.00	
Due Treasury	61.88	
	<hr/>	1,631,988.12
In Treasury—		
471 Panama 7 per cent general mortgage bonds (unissued)	471,000.00	
148 Panama 7 per cent general mortgage bonds (purchased)	150,574.29	
	<hr/>	621,574.29
Total		2,253,562.41

For that sum the pier itself, with its approaches, has been practically completed, and the dredging of the adjoining basin is about half finished.

It is now estimated that the additional necessary expense, incident to the completion of dredging and to the facilities required to adapt the pier to the company's wants, will amount to about \$427,000.

The board of directors has decided to push the work to completion, and it is anticipated that this will be accomplished before July of this year.

The projected establishment of grain elevators and warehouses on the Isthmus has been temporarily postponed on account of the low rates prevailing in grain traffic via Cape Horn.

From the accompanying report it appears that the net earnings for the year represent nearly 6 per cent on the \$7,000,000 of stock after payment of everything due, but it has been deemed prudent by your directors, on account of approaching liabilities in connection with the La Boca terminal, that this sum should not be distributed in dividends to stockholders.

The existing contract with the Pacific Mail Steamship Company (unless that company avails of its option to extend it for a further period of two years) will expire by limitation on December 16, next, and the company will be prepared to deal with this subject if that contract be not so extended.

It is gratifying to contemplate that your company has continued during the year its heretofore successful course.

I refer you to the accompanying reports for further particulars.

Respectfully submitted.

J. EDWARD SIMMONS, *President.*

PANAMA RAILROAD COMPANY,
New York, March 1, 1898.

To the President of the Panama Railroad Company:

SIR: I respectfully submit the following report of the business and operations of the Panama Railroad Company for the year ending December 31, 1897, and of the condition of the company's property and finances at the close of the year.

The operations of the year show the following results:

Statement of earnings and expenditures.

	1897.	1896.	Increase.	Decrease.
EARNINGS.				
Railroad:				
Colon to Panama—				
Freight	\$637,768.25	\$704,992.89		\$67,224.64
Treasure	5,618.25	3,803.11	\$1,815.14	
Mails	40,808.40	36,638.52	4,169.88	
Extra baggage	8,216.96	10,540.11		2,323.15
Passengers	48,950.42	50,287.72		6,337.30
	786,362.28	806,262.35		69,900.07
Panama to Colon—				
Freight	435,683.89	\$22,356.74	113,277.15	
Treasure	16,612.18	17,209.91		597.73
Mails	5,014.30	5,057.41		43.11
Extra baggage	6,028.95	6,236.79		207.84
Passengers	42,291.04	44,451.10		2,160.06
	505,580.36	895,311.95	170,268.41	
Total earnings of railroad	1,241,942.64	1,201,574.30	40,368.34	
Steamship lines:				
Panama Railroad Steamship Line—				
Freight	484,160.81	468,878.60	15,281.71	
Treasure	9,274.24	11,261.36		1,987.12
Mails	56,405.69	55,882.66	543.03	
Extra baggage	2,049.19	2,758.22		709.03
Passengers	111,781.06	140,678.14		28,892.08
Miscellaneous	6,816.50	11,770.80		4,954.30
	670,486.99	691,204.78		20,717.79
Temporary Pacific Line—				
From freight		81,000.05		31,000.05
Total earnings of steamship lines	670,486.99	722,204.83		51,717.84

Statement of earnings and expenditures—Continued.

	1897.	1896.	Increase.	Decrease.
EARNINGS—continued.				
Steamship lines—Continued.				
Joint railroad and steamship receipts—				
Interest and exchange.....	\$44,263.48	\$9,863.87	\$34,409.61	.....
Lighterage.....	217,604.18	210,232.01	7,372.17	.....
Water supplied shipping.....	56,886.14	60,469.69		\$3,583.56
Rental of property.....	17,094.04	21,666.76		4,572.72
Wharfage, storage, and light dues.....	47,225.56	37,225.71	9,999.85	.....
Telegraph.....	3,153.25	4,486.70		1,283.45
Miscellaneous.....	2,048.97	3,477.64		1,428.67
	388,275.62	347,362.38	40,913.24	.....
Total earnings.....	2,300,705.25	2,271,141.51	29,563.74	.....
EXPENDITURES.				
Operating expenses of railroad:				
General expenses on Isthmus.....	39,784.46	40,497.65		713.19
Conducting transportation.....	246,686.30	228,335.10	18,351.20	.....
Maintenance of equipment.....	67,406.99	53,965.22	13,441.77	.....
Maintenance of way and structures.....	121,531.19	59,600.21	61,930.98	.....
	475,408.94	382,398.18	93,010.76	.....
Operating expenses of steamship line:				
Panama Railroad steamship line—				
Steamer expenses.....	370,097.33	351,216.74	18,880.59	.....
Replacement of boilers and special repairs.....	57,000.00	2,199.96	54,800.04	.....
Depreciation of steamers.....	41,100.00		41,100.00	.....
Agency expenses.....	101,622.62	102,253.42		630.80
Charter of steamers.....	13,316.67	13,500.00		183.33
	583,136.62	469,170.12	113,966.50	.....
Temporary Pacific line—				
Steamer expenses.....		24,440.07		24,440.07
Agency expenses.....		3,055.67		3,055.67
		27,495.74		27,495.74
Total for steamship lines.....	583,136.62	496,665.86	86,470.76	.....
Joint railroad and steamship expenses—				
General expenses.....	94,491.64	102,578.68		8,087.04
Foreign agency expenses.....	8,405.56	15,307.49		6,901.93
Losses on cargo.....	23,806.77	6,553.63	17,253.14	.....
Drawback on Colombian produce.....	19,102.12	13,643.78	5,458.34	.....
Republic of Colombia, for nonextension of road.....	10,000.00	10,000.00		.....
Lighterage.....	105,804.28	116,863.18		11,058.90
Replacement of boilers and special repairs to tugs.....	3,000.00		3,000.00	.....
Depreciation of tugs.....	2,100.00		2,100.00	.....
Docks and wharves.....	34,981.75	45,849.50		10,867.75
Real estate and repairs to Colon buildings.....	15,123.03	12,602.58	2,520.50	.....
Taboga waterworks.....	30,872.87	33,375.05		2,502.68
	347,687.52	356,773.94		9,086.32
Total expenditures.....	1,406,233.06	1,295,837.88	170,395.20	.....
Earnings over operating expenses.....	894,472.17	1,035,303.63		140,831.46
Deduct fixed charges—				
Subsidy to Republic of Colombia.....	25,000.00	25,000.00		.....
Redemption of subsidy bonds.....	113,240.00	107,820.00	5,420.00	.....
Interest on subsidy bonds.....	111,760.00	117,180.00		5,420.00
Interest on sterling bonds to Oct. 10, 1897.....	186,370.42	239,619.10		53,248.68
Interest on first mortgage bonds, October 1, to December 31, 1897.....	22,500.00		22,500.00	.....
Redemption of first mortgage bonds.....	25,728.38		25,728.38	.....
	484,598.80	489,619.10		5,020.30
Net income.....	409,873.37	545,684.53		135,811.16

Gross revenue receipts, expenditures, and net earnings for 1897 compare, as under, with those for 1896:

	Receipts.	Expenses.	Net earnings.
1897.....	\$2,300,705.25	\$1,406,238.08	\$894,472.17
1896.....	2,271,141.51	1,285,887.98	1,085,303.63
Increase (+) or decrease (-) in 1897.....	+29,563.74	+170,395.20	-140,831.46

EARNINGS.

RAILROAD.

The total increase in earnings in 1897 over 1896 amounts to \$40,368.34, or 3.36 per cent, and results entirely from east-bound freight and west-bound treasure and mails.

There are large decreases on all other classes of earnings, due to the prejudicial effect upon traffic of a serious epidemic of yellow fever which extended throughout several of the Republics of Central and South America during the greater portion of the year; to revolutionary uprisings in Central America, with consequent general breakdown of credit and business depression; and to the depreciation of silver, affecting the currency of those Republics.

From the statement of earnings it will be seen that there has been a decrease of 8.67 per cent in earnings on west-bound business, an increase of 27.89 per cent on east-bound, and an increase of 3.36 per cent on the total earnings of the railroad.

The following table shows the freight tonnage carried over the railroad in 1897 as compared with 1896:

[Per ton of 2,000 pounds, or 40 cubic feet.]

	Year ending Dec. 31, 1897.	Year ending Dec. 31, 1896.	Increase.	Decrease.
Tons west bound	Tons. 173,345	Tons. 180,476	Per cent.	Per cent. 3.96
Tons east bound	117,306	98,721	18.82	.....
Total.....	290,651	279,197	4.10	.....

The gross earnings per ton moved on the road compare as follows:

	Year ending Dec. 31, 1897.	Year ending Dec. 31, 1896.	Increase.	Decrease.
West bound.....	\$3.68	\$3.91	Per cent.	Per cent. 5.88
East bound	3.71	3.26	18.80	.....
Average.....	3.69	3.68	.27	.....

The decrease in west-bound tonnage occurred entirely on traffic from Europe and New York to Central America during the last seven months of the year, and was caused by the general depression before referred to.

A reduction in west-bound rates was made necessary to meet active competition by the Magellan route, more especially on freight shipped from New York.

Table No. 1, attached to this report, shows origin and destination of the freight carried over the railroad, and Table No. 6 gives the classification of freight from the Pacific coast destined to all points.

Compared with 1896, the total tonnage carried over the road in 1897 shows an increase of 11,454 tons, or 4.10 per cent, and the earnings an increase of \$46,052.51, or 4.48 per cent.

Of the total tonnage carried, 59.64 per cent was west-bound and 40.36 per cent east-bound. In 1896 these proportions were 64.64 and 35.36 per cent, respectively.

Through freight amounted to 82.93 per cent of the total number of tons carried, against 83.57 per cent in 1896.

In 1897 there was an increase of earnings of \$1,217.41, or 5.79 per cent, on treasure; of \$4,126.77, or 9.90 per cent, on mails; and a decrease of \$2,530.99, or 15.09 per cent, on excess baggage. This decrease was due to the large falling off in the passenger business.

The following statements show the number of passengers carried and the passenger earnings:

Classification.	Passengers carried.				Passenger earnings.		
	1897.	1896.	Increase.	Decrease.	1897.	1896.	Decrease.
First class	5,111	6,293	<i>Per cent.</i>	<i>Per cent.</i>	\$27,080.60	\$35,360.15	<i>Per cent.</i>
Second class	104,813	97,464	7.54	.....	59,210.86	59,378.67	23.55
Total	109,924	103,757	5.94	.....	86,291.46	94,738.82	8.97

Average receipt per passenger.

Classification.	1897.	1896.	Increase.
First class:			<i>Per cent.</i>
Through	\$8.91	\$8.73	2.06
Local	2.87	2.69	6.69
Second class:			
Through	4.47	4.18	6.94
Local .....	.52	.52	.....

The number of first-class passengers carried shows a decrease of 1,182, or 18.78 per cent, and \$8,339.85, or 23.55 per cent, in revenue. These figures indicate the effects upon the through passenger traffic of the epidemic already referred to. There was an increase of 7,349, or 7.54 per cent, in the number of second-class passengers carried. This increase is entirely on local traffic.

STEAMSHIP LINE.

The gross earnings of the Atlantic Steamship Line show a decrease of \$20,717.79, or 3 per cent, due to the causes already referred to. The most important loss is in the passenger business, the receipts of which fell from \$140,673.14 in 1896 to \$111,781.06 in 1897. There was in 1897 an increase of \$15,281.71 in freight earnings. Table No. 9 will give full explanations regarding the divers earnings of the line.

Thirty-six round trips were made during the year.

Under the contract with the Pacific Mail Steamship Company, the Pacific Line of the Panama Railroad Company was discontinued in 1896, which explains the absence of earnings and expenses for that line in 1897.

JOINT RAILROAD AND STEAMSHIP RECEIPTS.

There is an increase of \$40,913.24, or 11.78 per cent, on this class of receipts, which arises entirely from interest and exchange, lighterage, wharfage, storage, and light dues. There is a decrease of \$4,572.72 on rental of property, due to the depression of business on the Isthmus during the greater part of last year. Table No. 14 gives the details of interest and exchange account.

The following table will show the number of tons lightered during the years 1897 and 1896:

	1897.	1896.	Increase.	Decrease.
	<i>Tons.</i>	<i>Tons.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Merchandise	173,212	162,661	6.49	.....
Lumber	66	319	.....	79.31
Coal	2,781	5,815	.....	58.04
Total	176,009	168,795	4.27	.....

EXPENDITURES.

The revenue expenditures of 1897 and 1896 compare as under:

	1897.	1896.	Increase.	Decrease.
Railroad	\$475, 408. 94	\$382, 398. 18	\$93, 010. 76	
Steamship lines	583, 136. 62	496, 665. 86	86, 470. 76	
Joint railroad and steamship expenses	347, 687. 52	356, 773. 84		\$9, 086. 32
Total	1, 406, 233. 08	1, 235, 837. 88	170, 395. 20	

This table shows there is an increase of \$170,395.20 in total revenue expenditures against an increase of only \$29,563.74 in earnings.

In order to correctly judge these results, which are in some respects apparently unfavorable, it is necessary to take into consideration, not only the disturbing elements already alluded to, but also that during last summer unusually heavy rains and freshets caused great damage to the roadbed; that very important improvements have been made to the railroad and buildings; that the steamships, upon which little had been spent since they became the company's property, have been thoroughly overhauled in Messrs. Cramp & Co.'s shipyards; and that during 1897 reserve fund accounts were opened for depreciation of steamers and tugs as well as for replacement of boilers and special repairs to steamers and tugs.

RAILROAD.

CONDUCTING TRANSPORTATION.

This account shows the following increases:

On fuel for locomotives, on account of increased mileage	\$9, 960. 03
On salaries and wages, due in part to increased traffic, and in part to abnormal expenditures caused by the yellow fever epidemic	9, 638. 23
	19, 598. 26
On other items there are slight decreases of expenditures, amounting to	1, 247. 06
Leaving a net increase in conducting transportation of	18, 351. 20

MAINTENANCE OF EQUIPMENT.

The increase of expenses in this department, which amounts to \$13,441.77, is due in part to betterments, consisting of applying steel-tired wheels and new axles to locomotive trucks, to rebuilding of cars, etc., and also to extra labor expenses while many employees and workmen were on sick list during the yellow fever epidemic.

Nine locomotives and 197 passenger and freight cars were thoroughly repaired during the year, and 5 freight cars were completely rebuilt.

MAINTENANCE OF WAY AND STRUCTURES.

There is a very important increase of \$61,930.98 in this department. During the past year very heavy rains, followed by floods of corresponding severity, destroyed banks and caused slides in many places, which greatly increased the cost of operation, and entailed the expense of repairing the special damage to the track, structures, and the heavy wear and tear of equipment, which are incident to such an experience. It was necessary to rebuild the embankments at Paraiso, Matachin, Bas Obispo, and Cucaracha. The abutments and foundations of 4 bridges were badly damaged; the masonry of 2 was rebuilt, and temporary repairs were made to two others, the high water of the river preventing anything further being done until the dry season.

The complete reballasting of the road and the renewal of cross-ties had for divers reasons, been postponed for several years back. It was thought advisable to undertake this work in 1897. During the year the condition of the track and structures has been materially improved. Every bridge, from Colon to Panama has been overhauled, including the repairing of piers and abutments, renewal of floors and painting. Grades have been revised, undulations and sags corrected, banks widened and their drainage improved by establishing permanent waterways through them. In

1897 12 miles of track have been thoroughly ballasted; 16,987 cross-ties and 166,082 feet of switch timber have been placed in the track. In connection with these ties and switch timber there have been placed in the track 22,000 Servis tie plates, which have materially bettered the gauge and prevented the cutting of rails into the ties. Low joints and the breaking of weak fish plates were a constant trouble. To overcome these difficulties, $9\frac{1}{4}$ miles of track, where sharp curves or lighter rails exist, have been relaid with new angle plates. During the year the new passenger station at Colon was finished; a complete rock-crushing plant was also installed at Pedro Miguel, which will overcome the necessity hitherto experienced of taking the ballast required for the whole year from the river during the dry season. The expenses incurred for this work have been carried to revenue account.

The increase in the expenses for maintenance of way and structures divides as follows:

Extraordinary and special repairs.....	\$11,487.31
Betterments	50,443.67
Total.....	61,930.98

STEAMSHIP LINE.

The increases of expenditure in this department are as follows:

Operating expenses.....	\$18,880.59
Replacement of boilers and special repairs to steamers.....	54,800.04
Depreciation of steamers.....	41,100.00

The operating expenses increased mainly from general repairs on the steamships *Alliança*, *Advance*, and *Finance*; labor on account of the handling of increased tonnage, and expenses, during the prevalence of yellow fever, incidental to the requirements of the quarantine regulations of the port of New York.

Extensive improvements were made during the year on all the steamships. In the three ships increase of passenger accommodation was provided, and complete electric-light plants and electric-call systems were installed. The *Alliança* was also provided with new boilers, masts, and pumps, while on the *Finance* and *Advance* parts of the main shafting were renewed; besides which the entire engines, boilers, hulls of the three ships were completely overhauled and placed in first-class working condition.

It is customary in all well-managed steamship corporations to provide and set aside, out of earnings, special funds to cover the depreciation of ships and the cost of replacement of boilers and extraordinary repairs. The company's financial condition warranting the taking of this prudent and conservative measure, without placing any undue charge upon net earnings, the board of directors decided that on and after January 1, 1897, a "fund for depreciation of steamers and tugs" and a "fund for replacement of boilers and special repairs to steamers and tugs" be opened on the company's books. It was further decided that an annual appropriation of \$43,200 should be made to the first, and \$60,000 to the second, of these funds.

The increase of expense in 1897 due to the establishment of the reserve funds is thus explained.

JOINT RAILROAD AND STEAMSHIP EXPENSES.

Although there is a decrease of \$9,086.32 in the total of this class of expenses, one item "Losses on cargo," shows an increase of \$17,253.14. This increase is chiefly due to the fact that, by reason of a reorganization in our auditing department, freight claims were much more quickly settled in 1897 than they previously had been, consequently, by far the larger portion of claims settled in 1897 were upon cargo carried during previous years.

This matter of loss and damage is, however, a serious one, to which careful attention is being constantly given. The employment of policemen as night watchmen in Panama freight yards has resulted in a decided improvement by reducing the number of robberies, and the extension of that system is contemplated.

The explanations given regarding the causes of increase of certain items of the company's expenses show that by far the greater portion of this increased expenditure represents permanent improvements, not ordinary operating expenses, and that at the end of 1897 the condition of the company's property was greatly improved.

CAPITAL ACCOUNT.

The \$4,000,000 outstanding 7 per cent sterling mortgage bonds of the company, the original of which issue amounted to £1,000,000 (\$5,000,000), matured on October 10, 1897, and were redeemed in due course.

Two million dollars of the new 4½ per cent first-mortgage sinking-fund gold bonds were issued on the 15th day of September last.

The following table shows the changes in capital account for the year:

	Capital stock.	General mortgage 7 per cent sterling bonds.	4½ per cent first-mortgage gold bonds.
Outstanding December 31, 1896.....	\$7,000,000	\$4,000,000	.....
4½ per cent first-mortgage gold bonds issued October 1, 1897.....			\$2,000,000
Total	7,000,000	4,000,000	2,000,000
Retired during the year.....		4,000,000	.....
Outstanding December 31, 1897.....	7,000,000		2,000,000
Increase (+) or decrease (-)		-4,000,000	+2,000,000

The details of receipts and expenditures on capital account are shown in the following table:

CREDIT.	DEBIT.
Depreciation of steamers and tugs.... \$43,200.00	Installation of electric plant, new state-rooms, and other additions on steamers..... \$33,513.77
Value of locomotive No. 14, dismantled 5,691.05	New terminal at La Boca..... 36,138.18
Balance, charges in excess of credits.. 21,082.81	Waterworks 271.91
69,923.86	69,923.86

One hundred and fourteen of the outstanding 1846 6 per cent sinking-fund subsidy bonds were drawn and redeemed in September.

During the past year great progress has been made in the construction of the pier and in the excavation of the deep-water port at La Boca. At the close of the year the pier was practically completed and the dredging of the basin was about one-half done.

The work is now sufficiently advanced to make it possible to estimate with some precision the total cost, which will amount to \$1,427,000, including \$80,000 for a freight yard, for a branch line between La Boca and the main line at Bomba, for an electric plant, for office buildings, and for the buoys of the basin.

The Panama Canal Company, which undertook the most important part of the work, has agreed to accept this company's 4½ per cent first-mortgage bonds to an amount of \$962,000 as security for advances made by it under said contract.

The company will provide cash payments for the balance of \$465,000 to be expended, and cover such outlays by the certification and issue of the necessary number of new 4½ per cent bonds, to be placed in the treasury of the company.

The board accordingly further resolved that the best interests of the company would be more adequately served by keeping in reserve the liquid assets now in the treasury of the company than by the distribution at this time of any dividend to the company's stockholders.

ASSETS AND LIABILITIES.

Statements A and B show the financial condition of the company on December 31, 1897.

The balance to the credit of profit and loss account of \$2,713,920.70 is represented by assets and expenditures, as follows:

Capital assets:

Cost of road, real estate, and equipment.....	\$9,889,394.19
Steamers <i>Alianza</i> , <i>Advance</i> , and <i>Finance</i>	329,069.27
Tugs and lighters.....	445,779.53
New terminal at La Boca	36,138.18

10,700,381.17

Capital liabilities:		
Capital stock.....	\$7,000,000.00	
4½ per cent twenty-year sinking-fund gold bonds.....	2,000,000.00	
		<u>\$9,000,000.00</u>
Capital assets over liabilities		\$1,700,381.17
Other assets and expenditures:		
294 6 per cent Panama Railroad Company's sub-sidy bonds.....	294,000.00	
Expenditures for replacement of boilers and special repairs to floating equipment, not yet charged to earnings.....	93,989.12	
		<u>387,989.12</u>
Sundry accounts receivable and coal and supplies on hand	298,828.22	
Less sundry liabilities	264,636.07	
		<u>34,192.15</u>
Cash on hand and with banks.....		591,358.26
		<u>2,713,920.70</u>
Total.....		2,713,920.70

GENERAL REMARKS.

During the period from 1894 to 1897, inclusive, the percentage of operating expenses to gross earnings was as follows:

	Per cent.
1894.....	69.93
1895.....	61.63
1896.....	53.94
1897.....	61.12

As already stated, the causes of the increase in operating expenses were:

First. The appropriation of large sums for depreciation of the company's floating equipment.

Second. Improvements and betterments to the permanent way and structures of such a character as to have made it possible to carry part of the cost thereof to capital account.

Third. Increases in working expenses due to the prevalence of yellow fever during a part of the year.

The two first items of increase in expenses were made possible by the company's very satisfactory financial condition.

The traffic affairs during the year call for no further special mention than is contained in the statistical statements to be found appended hereto concerning freight and passenger business of the railroad and steamships, with information as to the earnings and expenses, also statements regarding the railroad and floating equipments.

During the year the company has been free from serious accidents of any kind, either on the railroad or the steamships.

I desire to renew my thanks to the officers and employees of the company for their faithful and efficient services during the past year.

Respectfully,

G. WHALEY,
Vice-President and General Manager.

TABLE A.—*Balance sheet, December 31, 1897.*

RESOURCES.	
Cost of road, real estate, and equipment.....	\$9,589,394.19
Floating equipment:	
Steamers <i>Alliança, Finance, and Advance</i> , value December 31, 1896.....	\$386,656.50
Installation of electric plants, providing new staterooms and other additions on all steamers.....	88,518.77
Depreciation fund.....	870,169.27
	41,100.00
	\$329,069.27
Tugs and lighters, value December 31, 1896.....	447,879.58
Depreciation fund for tugs.....	2,100.00
	445,779.58
New terminal at La Boca ^a	774,848.80
	36,186.18
Total.....	10,700,881.17
Bonds in Treasury: 294 6 per cent Panama Railroad Company sinking-fund subsidy bonds.....	294,000.00
On deposit with financial agents for redemption of bonds:	
6 per cent subsidy bonds.....	\$44,000.00
General mortgage 7 per cent bonds and final coupon.....	5,082.66
	49,082.66
Advance of subsidy to Republic of Colombia.....	1,782,000.00
Fund for replacement of boilers and special repairs to steamers and tugs.....	98,989.12
Current assets:	
Cash in banks and with agents.....	\$591,858.26
Coal and supplies on hand.....	119,824.91
Uncollected earnings.....	50,986.77
Due from connecting companies.....	23,163.92
Due from United States Government.....	19,678.40
Due from companies and individuals.....	58,285.91
Accrued interest on deposits.....	746.64
Accrued interest on securities owned.....	2,940.00
Unadjusted accounts.....	23,201.67
	890,186.48
	18,759,589.43
LIABILITIES.	
Capital stock.....	\$7,000,000.00
4½ per cent twenty-year sinking fund gold bonds (authorized issue, \$4,000,000).....	2,000,000.00
Total capital stock and mortgage liabilities.....	9,000,000.00
6 per cent gold sinking fund subsidy bonds ^b	1,782,000.00
6 per cent gold sinking fund subsidy bonds drawn, not presented for payment:	
Drawn in 1896.....	\$1,000.00
Drawn in 1897.....	44,000.00
	45,000.00
General mortgage 7 per cent sterling bonds, not presented for payment (5 bonds).....	4,862.88
Accrued interest on bonds:	
4½ per cent first mortgage bonds.....	22,500.00
6 per cent subsidy bonds.....	17,320.00
	39,820.00
Funds for redemption of bonds:	
4½ per cent first mortgage bonds.....	62,500.00
6 per cent subsidy bonds.....	67,875.00
	130,375.00
Due Republic of Colombia:	
Department of Panama.....	21,875.00
Government of Colombia.....	1,666.67
	23,541.67
Current liabilities:	
Isthmus drafts not presented.....	22,610.29
Coupons not presented.....	9,103.45
Audited vouchers.....	36,767.44
Unclaimed dividends.....	307.00
Due deceased or missing employees.....	1,281.00
	70,069.18
Balance to credit of profit and loss.....	2,713,920.70
	18,759,589.43

^a During 1897 indebtedness to the extent of \$962,000 has been incurred on account of the construction of the La Boca terminal. This sum, which will become due in 1902, is to be secured by an equivalent amount of the company's new 4½ per cent bonds as collateral, and its total may be reduced in the meantime at the option of the company by payments on account.

^b 1,782 6 per cent gold sinking-fund subsidy bonds of \$1,000 each, amounting to \$1,782,000, issued November 1, 1890, fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1906, the same to be applied by the company: First, to the payment of the interest, and second, as a cumulative sinking fund for the redemption of the principal: the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1, after each drawing, and thereby redeeming the whole issue in 1908.

S. DEMING, *Treasurer.*

TABLE B.—*Profit and loss account, December 31, 1897.*

DEBIT.	
To operating expenses.....	\$1,406,233.08
Fixed charges.....	484,598.80
Cash balance of voluntary sinking fund for redemption of general mortgage 7 per cent sterling bonds transferred to the sinking fund for redemption of the 4½ per cent twenty-year sinking-fund gold bonds.....	36,771.62
Discount and expenses for issue of 2,000 4½ per cent twenty-year sinking-fund gold bonds.....	23,535.78
Value of locomotive No. 14, dismantled.....	5,691.05
Uncollectible accounts, charged off.....	89.19
Balance assets over liabilities, December 31, 1897.....	2,713,920.70
	4,670,840.17
CREDIT.	
By balance, December 31, 1896.....	\$567,465.79
Gross earnings.....	2,300,705.25
Income from other sources:	
Earnings of machine shops.....	20,009.07
Profit on coal and material.....	15,257.90
Sale of old hulk <i>Alma</i>	542.20
Balance to credit of voluntary sinking fund, October 10, 1897, transferred to profit and loss account.....	1,746,859.96
	4,670,840.17

[Extracts from the forty-ninth annual report of the Panama Railroad Company.]

NEW YORK, March 23, 1899.

To the Stockholders of the Panama Railroad Company:

GENTLEMEN: I respectfully submit for your consideration the report of the assistant general manager with accompanying statements of earnings and expenditures for the calendar year 1898, and the treasurer's balance sheet and transcript of profit and loss account.

In addition to the complete recital of the company's business in 1898, furnished by attached reports, it appears necessary for me to state only that:

The redemption of the company's 7 per cent sterling bonds was entirely completed and the mortgage upon which it was effected canceled of record; and

By the operation of the sinking-fund clause of the new 4½ per cent gold bond mortgage (authorized issue of \$4,000,000) the original issue of \$2,000,000 has been reduced by redemption and cancellation of 141 bonds to \$1,859,000, the present total of the company's outstanding mortgage liability.

A further issue of 962 of these bonds was authorized in order to provide as may be necessary for contract payments at maturity in 1902, or earlier, at the company's option, on account of indebtedness incurred in the construction of the La Boca terminal.

The 6 per cent subsidy bonds, due in 1910, have been reduced by redemption as provided by their sinking-fund clause from 1,732 to 1,611.

The Pacific Mail Steamship Company availed, in September last, of its option to extend the contract of December 16, 1895, for a further period of two years to December 16, 1900; and the contract of 1872 with that Company, which was an impediment to this company's development, has been abrogated and canceled.

A European department has been inaugurated and the company's agency in San Francisco reestablished.

The company's business was seriously affected by the war with Spain, which, during its continuance caused an almost total suspension of passenger traffic by our steamship line, together with a loss of coastwise traffic, both ways. Business with our foreign connections was relatively impaired. Despite these unfavorable conditions, your directors decided it best for the company to continue to operate its line between New York and Colon (the vessels of which are of American registry) and to meet the large outlay necessary for war risk insurance upon the steamers. This was accordingly done, with no more serious interruption than an occasional delayed sailing from either end, and the enviable record established thereby that ours was the sole company with vessels sailing under the American flag which maintained its regular service throughout the war between this country and a foreign port, on the Atlantic Ocean, the actual field of belligerent operation.

Revolutionary disturbances in South American republics and consequent loss of credit had a damaging effect during the year upon our foreign traffic, and the cost of operating our road was materially increased by an advance in wages to silver-pay employees at the Isthmus made to avert threatened labor troubles occasioned by a continued advance in rates of exchange.

Despite special adverse circumstances, the net earnings for the year, after payment of everything due, represent nearly 4 per cent upon the capital stock (\$7,000,000), but it is deemed prudent for the present by your directors that no distribution in dividends should be made to the stockholders.

I refer you to the accompanying reports for further particulars.

Respectfully submitted.

J. EDWARD SIMMONS, *President.*

PANAMA RAILROAD COMPANY,
New York, March 15, 1899.

To the President of the Panama Railroad Company:

SIR: I respectfully submit the following report of the business and operations of the Panama Railroad Company for the year ending December 31, 1898, and of the condition of the company's property and finances at the close of the year.

The operations of the year show the following results:

Statement of earnings and expenditures.

	1898.	1897.	Increase.	Decrease.
EARNINGS.				
Railroad:				
Colon to Panama—				
Freight	\$527,872.84	\$637,768.25		\$109,895.41
Treasure	5,129.63	5,618.25		488.62
Mails	39,667.14	40,808.40		1,141.26
Extra baggage	7,926.61	8,216.96		290.35
Passengers	41,811.54	43,950.42		2,138.88
	622,407.76	736,362.28		113,954.52
Panama to Colon—				
Freight	413,015.60	435,633.89		22,618.29
Treasure	17,229.25	16,612.18	\$617.07	
Mails	5,275.11	5,014.50	260.61	
Extra baggage	7,039.22	6,028.95	1,010.27	
Passengers	41,493.43	42,291.04		797.61
	484,052.61	505,580.36		21,527.75
Total earnings of railroad	1,106,460.37	1,241,942.64		135,482.27
Panama Railroad Steamship Line—				
Freight	478,731.82	484,160.31		5,428.49
Treasure	10,037.97	9,274.24	763.73	
Mails	50,917.78	56,405.69		5,487.91
Extra baggage	1,285.64	2,049.19		763.55
Passengers	74,891.20	111,781.06		36,889.87
Miscellaneous	4,319.53	6,816.50		2,496.96
	620,183.94	670,486.99		50,303.05
Joint railroad and steamship receipts—				
Interest and exchange	77,651.39	44,263.48	33,387.91	
Lighterage	181,978.01	217,604.18		35,626.17
Water supplied shipping	15,406.42	56,886.14		41,479.72
Rental of property	16,848.45	17,094.04		245.59
Wharfage, storage, and light dues	40,180.15	47,225.56		7,045.41
Telegraph	10,956.65	3,153.25	7,803.40	
Miscellaneous	1,558.67	2,048.97		490.30
Earnings of machine shops	36,420.15		36,420.15	
Profit on coal and material	35,236.97		35,236.97	
	416,236.86	388,275.62	27,961.24	
Total earnings	2,142,891.17	2,300,705.25		157,814.08
EXPENDITURES.				
Operating expenses of railroad:				
General expenses on Isthmus	41,036.49	39,784.46	1,252.03	
Conducting transportation	259,886.66	246,686.30	13,200.36	
Maintenance of equipment	69,919.09	67,406.99	2,512.10	
Maintenance of way and structures	129,595.18	121,531.19	8,063.99	
	500,437.42	475,408.94	25,028.48	

Statement of earnings and expenditures—Continued.

	1896.	1897.	Increase.	Decrease.
EXPENDITURES—continued.				
Panama Railroad Steamship Line:				
Steamer expenses.....	\$399,459.46	\$370,097.33	\$29,362.13	
Replacement of boilers and special repairs.....	57,000.00	57,000.00		
Depreciation of steamers.....	41,100.00	41,100.00		
Agency expenses.....	101,613.52	101,622.62		\$9.10
Charter of steamers.....		13,316.67		13,316.67
	599,172.98	583,186.62	16,086.36	
Joint railroad and steamship expenses:				
General expenses.....	97,864.15	94,491.64	3,372.51	
Foreign agency expenses.....	6,086.57	8,405.56		2,318.99
Losses on cargo.....	5,589.24	23,806.77		18,217.53
Drawback on Colombian produce.....	19,523.07	19,102.12	420.95	
Republic of Colombia for nonextension of road.....	10,000.00	10,000.00		
Lighterage.....	97,790.52	105,804.28		8,013.76
Replacement of boilers and special repairs to tugs.....	3,000.00	3,000.00		
Depreciation of tugs.....	2,100.00	2,100.00		
Docks and wharves.....	30,344.59	34,981.75		4,637.16
Real estate and repairs to Colon buildings.....	16,446.71	15,123.08	1,323.68	
Taboga waterworks.....	2,537.94	30,872.37		28,334.43
	291,282.79	347,687.52		56,404.73
Total expenditures.....	1,390,893.19	1,406,233.08		15,339.89
Earnings over operating expenses.....	751,987.98	894,472.17		142,484.19
Deduct fixed charges:				
Subsidy to Republic of Colombia.....	25,000.00	25,000.00		
Redemption of subsidy bonds.....	121,080.00	113,240.00	7,840.00	
Interest on subsidy bonds.....	103,920.00	111,760.00		7,840.00
Interest on sterling bonds.....		186,370.42		186,370.42
Interest on first mortgage bonds.....	85,241.25	22,500.00	62,741.25	
Redemption of first mortgage bonds.....	150,000.00	25,728.38	124,271.62	
	485,241.25	484,598.80	642.45	
Net income.....	266,746.73	409,873.37		143,126.64

Gross revenue receipts, expenditures and net earnings for 1898, compare, as under, with those of 1897:

	Earnings.	Expenses.	Net earnings.
1897.....	\$2,300,705.25	\$1,406,233.08	\$894,472.17
1898.....	2,142,881.17	1,390,893.19	751,987.98
Decrease in 1898.....	157,824.08	15,339.89	142,484.19
Increase in fixed charges 1898.....			642.45
Decrease in profit 1898.....			143,126.64

EARNINGS.**RAILROAD.**

The total net decrease of earnings of the railroad proper in 1898 as compared with 1897 of \$135,482.27, or 10.91 per cent, results principally from east and west bound freight and passengers.

The large falling off was due to a continuance in 1898 of the disturbing trade conditions in Central and South America, which so seriously affected the company's traffic in 1897, as shown by the fact that decreases in cargo west bound over our road from all points to points on the Pacific coast aggregated nearly 30,000 tons, and east-bound cargo to all points from Pacific coast points shows a reduction of almost 13,000 tons. This combined loss was, however, offset by important increases to and from particular points, resulting as shown in Table No. 4.

The most important decrease was in cargo, to points in Central America, of 21,000 tons from Europe and 3,400 tons from New York.

All official reports, consular and commercial, received from that territory confirm relative decrease in imports, thus accounting for our loss of traffic as not caused by version to other routes.

The large decline in imports was owing to reduced production of raw products, due to revolutionary outbreaks, together with a fall in value of those products in foreign markets, added to a depreciation in silver (the money basis of the country), which resulted in disturbing credit and limiting purchase power.

Decreases to and from New York were almost entirely due to the Spanish-American war, as the vessels of our steamship lines are of American registry.

There was a decrease of 15.48 per cent in earnings on west-bound business, and of 4.26 per cent on east-bound business.

The following table shows the freight tonnage carried over the railroad in 1898 as compared with 1897:

[Per ton of 2,000 pounds, or 40 cubic feet.]

	Year ending December 31, 1898.	Year ending December 31, 1897.	Increase.	Decrease.
	Tons.	Tons.	Per cent.	Per cent.
West bound.....	144, 182	173, 845		16.82
East bound.....	123, 974	117, 306	5.68	
Total.....	268, 156	290, 651		7.74

The gross earnings per ton moved on the road compare as follows:

	Year ending December 31, 1898.	Year ending December 31, 1897.	Decrease.
			Per cent.
West bound.....	\$3.66	\$3.68	0.54
East bound.....	3.33	3.71	10.24
Average.....	3.51	3.69	4.88

Decreases in west-bound tonnage occurred on traffic from Europe to Central America, Mexico, San Francisco, and South Pacific ports to and including Guayaquil, while there was an increase on freight destined to Panama and South Pacific ports other than above.

The total freight tonnage east-bound increased 6,668 tons, or 5.68 per cent, the principal increase being on traffic from South Pacific ports for both New York and Europe. The most important decreases were from Central America to Europe and New York, from Panama to Europe, and from San Francisco to New York, the last of 4,581 tons, or about 27 per cent, was the result more of inability to agree with our cocarrier upon effective rates to meet competition than to other trade conditions affecting our route, as shown by an increase New York to San Francisco of 3,198 tons, or about 12 per cent.

Table No. 4, attached to this report, shows origin and destination of the freight carried over the railroad, and Table No. 9 gives the classification of freight from the Pacific coast destined to all ports.

Compared with 1897, the total tonnage carried over the road in 1898 shows a decrease of 22,495 tons, or 7.74 per cent, and the earnings a decrease of \$132,513.70, or 12.35 per cent.

Of the total tonnage carried, 53.77 per cent was west bound and 46.23 per cent east bound. In 1897 these proportions were 59.64 per cent and 40.36 per cent, respectively.

Through freight amounted to 84.16 per cent of the total number of tons carried, against 82.93 per cent in 1897.

In 1898 there was an increase of \$128.45, or 0.58 per cent, on treasure; of \$719.92, or 5.05 per cent, on excess baggage, and a decrease of \$880.45, or 1.92 per cent, on mails.

The following statements show the number of passengers carried and the passenger earnings.

Classification.	Number of passengers carried.			
	1898.	1897.	Increase.	Decrease.
First class.....	4,868	5,111	<i>Per cent.</i>	<i>Per cent.</i>
Second class.....	112,936	104,813	7.75	4.75
Total.....	117,804	109,924	7.17	

Classification.	Passenger earnings.		
	1898.	1897.	Decrease.
First class.....	\$25,106.90	\$27,080.60	<i>Per cent.</i>
Second class.....	58,198.07	59,210.86	7.12
Total.....	83,304.97	86,241.46	1.71
			3.40

AVERAGE RECEIPT PER PASSENGER.

Classification.	1898.	1897.	Increase.	Decrease.
First class:			<i>Per cent.</i>	<i>Per cent.</i>
Through.....	\$8.89	\$8.91		0.22
Local.....	2.91	2.87	1.39	
Second class:				
Through.....	4.59	4.47	2.68	
Local.....	.49	.52		5.77

The number of first-class passengers carried shows a decrease of 243, or 4.75 per cent, and \$1,923.70, or 7.12 per cent, in revenue. This falling off was occasioned by the effects upon the through passenger business of the Spanish-American war. There was an increase of 8,123, or 7.75 per cent, in the number of second-class passengers carried, although there is a loss in revenue of \$1,012.79, or 1.71 per cent.

STEAMSHIP LINE.

The earnings of the steamship line show a decrease of \$50,303.05, or 7.5 per cent, as compared with those of 1897. The increases and decreases quarterly are as follows:

	Increase.	Decrease.
First quarter.....	\$14,364.02	
Second quarter.....		\$55,396.50
Third quarter.....		26,989.20
Fourth quarter.....	17,718.63	
Total.....	\$2,082.65	\$2,385.70

making net decrease in revenue of \$50,303.05 for the year, as mentioned above.

From this it will be seen that the decrease in earnings occurred during the period from April to September, while the Spanish-American war was in progress.

All classes of earnings except treasure show a decrease, the most important being for passengers, which amounts to \$36,889.86, or 33 per cent, the traveling public having been deterred from using our steamers by fear of the Spanish fleet in the West Indian waters.

JOINT RAILROAD AND STEAMSHIP RECEIPTS.

These receipts show an increase of \$27,961.24, or 7.20 per cent, resulting from an increase in interest and exchange of \$33,387.91, or 75.43 per cent; an increase in telegraph receipts of \$7,803.40, or 247.47 per cent, due to war message service; and by accumulated earnings of machine shops and from sales of coal and material for the years 1896, 1897, and 1898, now definitely carried to earnings; to offset which there are decreases in lighterage receipts of \$35,626.17, or 16.37 per cent, of \$7,045.41, or

14.92 per cent, for wharfage, storage, and light dues, owing to loss of through tonnage; and of receipts from water supplied shipping, amounting to \$41,479.72, or 72.92 per cent, chiefly because our service at Taboga waterworks, in Panama Bay, was discontinued after January.

The following table will show the number of tons lightered during the years 1898 and 1897:

	1898.	1897.	Increase. Decrease.	
	Tons.	Tons.	Per cent.	Per cent.
Merchandise.....	142,536	173,212		17.71
Lumber.....	872	66	1,221.21	
Coal.....	1,963	2,731		28.12
Total.....	145,371	176,009		17.41

EXPENDITURES.

The revenue expenditures of 1898 and 1897 compare as under:

	1898.	1897.	Increase.	Decrease.
Railroad.....	\$500,437.42	\$475,408.94	\$25,028.48	
Steamship line.....	569,172.96	583,186.62	16,066.36	
Joint railroad and steamship expenses.....	291,282.79	347,687.52		\$56,404.73
Total expenses.....	1,390,893.19	1,406,233.08		15,339.89

This table shows there is a decrease of \$15,339.89 in total revenue expenditures against a decrease of \$157,824.08 in earnings.

This decrease in total expenditures, apparently so disproportionate to the loss of traffic for the year, elsewhere herein accounted for, can be partially explained by the necessity for maintaining plant and service in an efficient condition in anticipation of resuming active operations, notwithstanding serious temporary variations in the volume of traffic and, further, by increase in outlay for maintenance of way, structures, and equipment, added to a temporary increase in cost of conducting transportation, due to an advance of 25 cents silver per day to all classes of silver pay employees.

RAILROAD.

CONDUCTING TRANSPORTATION.

This account shows an increase of \$13,200.36, or 5.35 per cent, due to the advance of 25 cents silver per day in wages above referred to.

MAINTENANCE OF EQUIPMENT.

The increase in this department, amounting to \$2,512.10, or 3.73 per cent, is due almost entirely to extensive repairs to freight cars.

MAINTENANCE OF WAY AND STRUCTURES.

Reballasting road and renewing cross-ties and rail fastenings, begun in 1897, was continued in 1898, which, together with the increase in wages referred to, accounts for an increase in this department of \$8,063.99, or 6.64 per cent.

STEAMSHIP LINE.

There is an increase of expenditure in this department, amounting to \$16,036.36, or 2.75 per cent, which is accounted for by the added cost of war-risk insurance on steamers, which were continuously operated during the Spanish-American war, amounting to \$37,031.21. But for this compulsory outlay, which caused an increase in steamer expenses of \$29,362.13, or 7.93 per cent, there would have been a net decrease of about \$21,000 in cost of operations between New York and Colon after making the same allowance in both years for "replacement," "special repairs" to and "depreciation in value" of steamships.

Repairs in deck and commissary departments of the steamers were \$19,936.05 less than in 1897; against which there was an increase of \$4,971.38 in engine department repairs; in cost of fuel of \$2,841.61; labor on cargo, \$8,606.02; labor on coal, \$2,477.03, and wages, \$4,142.14, owing to steamers making 37 round trips in 1898 instead of 36, as in 1897. The increase in cost of labor on cargo was due to the larger quantity of freight handled and to overtime caused by turning the ships around more quickly.

FLOATING EQUIPMENT.

Owing to the discontinuance during the year of our Taboga water service in Panama Bay consequent upon the installation there by the Pacific Mail Steamship Company of its own plant, the water launch and tugs *Balboa* and *Ancon* have been laid up, but kept in good repair.

At Colon a new floating pile driver, 60 by 30 by 5 feet, with a drop of 50 feet, was constructed of wooden hull, copper sheathed.

The lighterage plant was kept in good condition.

JOINT RAILROAD AND STEAMSHIP EXPENSES.

These expenses show a decrease of \$56,404.73, or 16.22 per cent, for the year as compared with 1897, after making the same allowance in both years for "replacement" and "special repairs," as well as for "depreciation in value of tugs," etc. This is accounted for by a decreased outlay for losses on cargo, foreign agency expenses, lighterage (due to decreased tonnage lightered), repairs to docks, wharves, and cessation of Taboga water service.

Increases resulted in certain items on account of clerical additions to agency and department forces.

CAPITAL ACCOUNT.

The \$2,000,000 new 4½ per cent first-mortgage sinking-fund gold bonds, issued on September 15, 1897, were supplemented by a further issue of \$962,000, authorized on September 22, 1898. The total was reduced by the redemption, principal and interest, of 141 bonds, under the provision of the sinking-fund clause of the mortgage. The following table shows the changes in capital account for the year:

	Capital stock.	4½ per cent first-mortgage gold bonds.
Outstanding December 31, 1897.....	\$7,000,000	\$2,000,000
4½ per cent first-mortgage gold bonds issued.....		962,000
Total.....	7,000,000	2,962,000
Retired during the year.....		141,000
Outstanding December 31, 1898.....	7,000,000	2,821,000
Increase.....		821,000

The details of receipts and expenditures on capital account are shown in the following table:

CREDIT.	DEBIT.
Cost of 481 flat and coal cars dismantled during the year.....	New terminal at La Boca.....
Depreciation of steamers and tugs.....	La Boca branch, electric-light plant, office buildings, etc.....
Balance, charges in excess of credits.....	New floating pile driver.....
1,131,267.59	\$1,171,072.20
885,418.66	81,386.02
43,200.00	7,428.08
1,259,886.25	1,259,886.25

One hundred and twenty-one of the outstanding 1,732 6 per cent sinking-fund subsidy bonds were drawn in September and redeemed November 1.

Continued progress was made during the year in completing the new terminal port and pier at La Boca, in the Bay of Panama, which, as now almost finished, consists of a magnificent pier 1,000 feet long, 50 feet wide, constructed on 24 solid cement piers founded on bed rock, shedded its entire length, with 5 large steam hoisting cranes and one 15-ton derrick crane, with which to discharge or load 3 large ships at one time.

Basins have been excavated alongside the pier of sufficient size to allow a free

movement of vessels of 3,000 tons capacity, and to allow such vessels to be safely berthed there at all stages of a tide which has an average rise and fall of 21 feet.

Cargo will be rapidly transferred directly to and from cars on the pier, which is connected by a branch road with the main line.

On the pier and mainland adjoining there have been newly constructed and installed an ample train yard, water plant for pier and ships, electric-light plant, treasure vault, telephone and telegraph lines, track scale and engine shed, and office buildings.

An experienced working force is on the ground, and the port captain and freight agent's residence is near by.

It was estimated in 1897 that the total cost of construction for the port, pier, and all appurtenances would be \$1,389,000, and it is to be noted that that figure has not been reached, expenditures made or contracted to be made amounting to \$1,288,597.40 for the period covered by this report.

Of this indebtedness but \$36,138.18 appeared in the company's balance sheet for December 31, 1897, that amount only having been duly verified and recognized in account up to that date.

During 1898 indebtedness to the Panama Canal Company for construction of the almost completed terminal was regularly established in account up to July 1, 1898, amounting to \$1,139,586.22, which amount was later reduced, by payment of interest up to that date, to \$1,098,617.88.

Of this amount \$962,000 is due in 1902, unless paid earlier at the company's option, and is secured by the deposit of an equivalent number of the company's new $4\frac{1}{2}$ per cent gold bonds.

The balance, \$136,617.88, is due in 1900, and can be easily met from current earnings.

At this writing the pier, with its accessories, is ready for actual operation; in fact a large number of launches have already been discharged there.

It is expected that arrangements will be shortly consummated with connecting lines providing for the permanent discharging and loading of their steamers at the pier hereafter.

A large number of flat cars, required for traffic in connection with active canal operations prior to 1890, which, since then, not being in use, had become unserviceable, were dismantled, and their cost, less the value of material remaining, written off of capital account to profit and loss.

These cars had not appeared in rolling stock equipment reports since 1894.

ASSETS AND LIABILITIES.

Statements A and B show the financial condition of the company December 31, 1898.

The balance to the credit of profit and loss account of \$2,971,448.51 is represented by assets and expenditures, as follows:

Capital assets:	
Cost of road, real estate, and equipment.....	\$9, 778, 905.81
New terminal at La Boca	1, 207, 210.38
La Boca branch, electric-light plant, office buildings, etc	81, 386.02
Steamers <i>Alliança</i> , <i>Advance</i> , and <i>Finance</i>	287, 969.27
Tugs, lighters, and floating pile driver	451, 107.56
	<hr/>
	11, 806, 579.04
Capital liabilities:	
Capital stock.....	\$7, 000, 000.00
$4\frac{1}{2}$ per cent twenty-yearsinking-fund gold bonds (less 962 bonds in treasury)	1, 859, 000.00
Due contractors, new terminal at La Boca	1, 098, 617.88
	<hr/>
	9, 957, 617.88
Capital assets over liabilities	\$1, 848, 961.16
Other assets and expenditures:	
270 6 per cent Panama Railroad Company's subsidy bonds	270, 000.00
Expenditures for replacement of boilers and special repairs to floating equipment.....	33, 989.12
	<hr/>
	303, 989.12

Sundry accounts receivable and coal and supplies on hand	\$388,943.96	
Sundry liabilities	251,773.31	
Balance		\$137,170.65
Cash on hand and with banks		681,327.58
Total		2,971,448.51

GENERAL REMARKS.

During the period from 1894 to 1898, inclusive, the percentage of operating expenses to gross earnings was as follows:

	Per cent.
1894	69.93
1895	61.63
1896	53.94
1897	61.12
1898	64.91

The causes of the increase in operating expenses were:

First. The appropriation of large sums for depreciation of the company's floating equipment.

Second. Important increases in expenditures for maintenance of way and structures begun in 1897 and continued in 1898.

Third. Increases in expenses due to advance in wages to silver-pay employees on the Isthmus.

Fourth. Increase in cost of operation of the company's steamship line due to war-risk insurance.

The company's accounts since its incorporation in 1849 to December 31, 1897, have been examined and certified as correct up to that date by expert accounting.

The traffic affairs during the year call for no further special mention than is contained in the statistical statements to be found appended hereto concerning freight and passenger business of the railroad and steamships, with information as to the earnings and expenses, also statements regarding the railroad and floating equipments.

During the year the company has been free from serious accidents of any kind, either on the railroad or the steamships.

I take pleasure in acknowledging the hearty support and cordial assistance of the company's officers and employees in the performance of my duties, and in testifying to their efficiency and loyalty to the company's interests.

Respectfully,

E. A. DRAKE,
Assistant General Manager.

TABLE A.—Balance sheet, December 31, 1898

RESOURCES.

Cost of road, real estate and equipment	\$9,778,905.81
New terminal at La Boca	1,207,210.36
La Boca branch, electric-light plant, office buildings, etc.	81,386.02
Floating equipment:	
Steamers <i>Alianza</i> , <i>Financé</i> , and <i>Avance</i> reduced value	
December 31, 1897	\$329,069.27
Depreciation fund	41,100.00
	\$287,969.27
Tug and lighters, reduced value December 31, 1897.	445,779.53
Depreciation fund for tugs	2,100.00
	443,679.53
New floating pile driver	7,428.03
	739,076.83
Total	11,806,579.04
Bonds in treasury:	
270 6 per cent Panama Railroad Company sinking-fund subsidy bonds.	270,000.00
962 4½ per cent twenty-year gold sinking-fund bonds	962,000.00
	1,232,000.00
On deposit with financial agents for redemption of bonds:	
6 per cent subsidy bonds	12,000.00
4½ per cent gold sinking-fund bonds	691.52
	12,691.52
Advance of subsidy to Republic of Colombia	1,611,000.00
Fund for replacement of boilers and special repairs to steamers and tugs.	35,989.12

Current assets:		
Cash in bank and with agents.....	\$681,327.58	
Coal and supplies on hand.....	135,149.00	
Due from connecting companies.....	123,155.20	
Due from United States Government.....	14,934.69	
Due from companies and individuals.....	73,795.15	
Accrued interest on deposits.....	1,596.84	
Accrued interest on securities owned.....	2,700.00	
General average accounts.....	15,614.12	
Unadjusted accounts.....	21,996.96	
		<u>\$1,070,271.64</u>
		15,766,581.22
LIABILITIES.		
Capital stock.....		\$7,000,000.00
4½ per cent twenty-year sinking-fund gold bonds (authorized issue, \$4,000,000):		
Issued to date.....	\$2,962,000.00	
Redeemed and canceled.....	141,000.00	
		<u>2,821,000.00</u>
Total capital stock and mortgage liabilities.....		9,821,000.00
6 per cent gold sinking-fund subsidy bonds.....		1,611,000.00
Due contractors, new terminal at La Boca.....		1,098,617.88
6 per cent gold sinking-fund subsidy bonds drawn, not presented for payment:		
Drawn in 1897.....	1,000.00	
Drawn in 1898.....	12,000.00	
		<u>13,000.00</u>
Accrued interest on bonds:		
4½ per cent twenty-year gold bonds (1859 bonds).....	20,913.75	
6 per cent subsidy bonds.....	16,110.00	
		<u>37,023.75</u>
Funds for redemption of bonds:		
4½ per cent twenty-year gold bonds.....	63,191.52	
6 per cent subsidy bonds.....	69,165.00	
		<u>132,356.52</u>
Due Republic of Colombia:		
Department of Panama.....	21,875.00	
Government of Colombia.....	1,666.67	
		<u>23,541.67</u>
Current liabilities:		
Isthmus drafts not presented.....	21,350.84	
Coupons not presented.....	5,138.80	
Audited vouchers.....	30,326.60	
Unclaimed dividends.....	307.00	
Due deceased or missing employees.....	1,421.15	
		<u>58,542.39</u>
Balance to credit of profit and loss.....		2,971,448.51
		<u>15,766,581.22</u>

TABLE B.—Profit and loss account, December 31, 1898.

DEBIT.	
To operating expenses.....	\$1,390,893.19
Fixed charges.....	485,241.25
Cost of 481 flat and coal cars dismantled during year, less value of material fit for use.....	85,418.66
Adjustment of coal, machine shops, and supply accounts.....	55,561.04
Difference between coffee and cocoa rebates of previous years, and amounts set aside out of earnings to meet same.....	5,137.17
Expenses, 4½ per cent twenty-year sinking-fund gold bonds.....	3,592.40
Uncollectible and old accounts, charged off.....	509.65
Balance, assets over liabilities, December 31, 1898.....	2,971,448.51
	<u>4,997,801.87</u>

^a \$1,611 6 per cent gold sinking fund subsidy bonds, of \$1,000 each, amounting to \$1,611,000, issued November 1, 1880, fall due November 1, 1910.

^b Of this amount \$962,000 will become due in 1902 and is secured by an equivalent amount of the company's new 4½ per cent bonds as collateral; \$113,792.98 becomes due March 31, 1900, and \$22,824.90 on June 30, 1900. The total may be reduced in the meantime at the option of the company by payments on account.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company: First, to the payment of the interest, and second as a cumulative sinking fund for the redemption of the principal; the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1, after each drawing, and thereby redeeming the whole issue in 1908.

S. DEMING, Treasurer.

CREDIT.

By balance, December 31, 1897.....	\$2,713,920.70
Gross earnings.....	2,142,881.17
4½ per cent twenty-year sinking-fund gold bonds, redeemed.....	141,000.00
	<hr/> 4,997,801.87

S. DEMING, *Treasurer.*

[Extracts from the fiftieth annual report of the Panama Railroad Company.]

NEW YORK, March 22, 1900.

To the Stockholders of the Panama Railroad Company.

GENTLEMEN: I present for your consideration the report of the general manager, and the accompanying statement of earnings and expenditures for the calendar year 1899, and the treasurer's balance sheet and transcript of profit and loss account.

In addition to the complete statement of the company's business furnished by the reports attached, I may call to your attention that—

The new 4½ per cent first-mortgage gold bonds have been reduced by redemption, as provided by the sinking-fund clause from \$2,821,000 to \$2,681,000 of such bonds.

The 6 per cent subsidy bonds due in 1910 have been reduced by redemption as provided by the sinking-fund clause from \$1,611,000 to \$1,482,000 of such bonds.

During the past year the completion of the company's new terminal at La Boca was announced, and the port and pier was declared open to commerce; nevertheless work has been steadily continued in deepening the sea approach to and the basins adjoining the pier to accommodate even larger ships than now call at Panama.

A survey of the port and its approach by the United States Hydrographic Office has just been completed, and the publication of charts is expected.

The development of Pacific coast traffic has increased the number of steamship lines engaged in calling at ports north of Panama, some of which are seeking to oblige the company to grant them general through billing privileges. It is a part of the company's policy to increase the number of its cocarriers on both oceans at the earliest favorable opportunity.

The contract of December 16, 1895, with the Pacific Mail Steamship Company expires by limitation in December next.

I can not too seriously dwell upon the important advantages certain to result from a development of the company's steamship line by the construction of at least three modern American steamers suited to the company's trade; in fact, such action is rendered almost imperative in order to retain our present business against increasing competition, as well as to provide for the increase in traffic which is assured.

The company's land department has been reorganized and placed in charge of competent officials.

The general manager visited the Isthmus toward the close of the year, and a report of his careful inspection of the company's property is on file.

The net earnings for the year, after payment of everything due, represent something over 4 per cent upon the capital stock (\$7,000,000), but it is deemed prudent by your directors that no distribution in dividends be made at present to the stockholders.

The company has arranged to remove its New York offices to No. 24 State street on May 1 next, and to consolidate there its present force of general and pier offices' employees so as to afford better facilities to our patrons and reduce expenses.

I refer you to the accompanying reports for further particulars.

Respectfully submitted.

J. EDWARD SIMMONS, *President.*PANAMA RAILROAD COMPANY,
New York, March 15, 1900.*To the President of the Panama Railroad Company.*

SIR: I respectfully submit the following report of the business and operations of the Panama Railroad Company for the year ending December 31, 1899, and of the condition of the company's property and finances at the close of the year.

The operations of the year show the following results:

Statement of earnings and expenditures.

	1899.	1898.	Increase.	Decrease.
EARNINGS.				
Railroad:				
Colon to Panama—				
Freight.....	\$526,382.19	\$527,872.84		\$1,490.65
Treasure.....	6,668.44	5,129.63	\$1,538.81	
Mails.....	41,648.47	39,667.14	1,981.33	
Extra baggage.....	6,827.62	7,928.61		1,098.99
Passengers.....	30,677.08	41,811.54		11,134.46
	612,203.80	622,407.76		10,203.96
Panama to Colon—				
Freight.....	427,655.12	413,015.60	14,639.52	
Treasure.....	15,702.09	17,229.25		1,527.16
Mails.....	4,871.58	5,275.11		403.53
Extra baggage.....	5,564.88	7,089.22		1,474.34
Passengers.....	32,969.39	41,493.43		8,524.04
	486,763.06	484,062.61	2,710.45	
Total earnings of railroad.....	1,098,966.86	1,106,460.37		7,493.51
Panama Railroad Steamship Lines—				
Freight.....	594,131.92	478,781.82	115,400.10	
Treasure.....	7,502.21	10,087.97		2,585.76
Mails.....	53,189.72	50,917.78	2,271.94	
Extra baggage.....	1,949.85	1,285.64	664.21	
Passengers.....	100,621.00	74,891.20	25,729.80	
Miscellaneous.....	5,075.38	4,319.53	755.85	
	762,470.06	620,183.94	142,286.14	
Joint railroad and steamship receipts—				
Interest and exchange.....	43,290.46	77,651.39		34,360.93
Ligherage.....	182,819.18	181,978.01	841.17	
Water supplied shipping.....	13,844.20	15,406.42		1,562.22
Rental of property.....	16,751.53	16,848.45		96.92
Wharfage, storage and light dues.....	38,092.13	40,180.15		2,088.02
Telegraph.....	3,633.85	10,956.65		7,322.80
Miscellaneous.....	1,580.84	1,558.67	22.17	
Earnings of machine shops.....	11,971.02	36,420.15		24,449.13
Profit on coal and materials.....	21,621.81	35,236.97		13,615.16
	333,605.02	416,236.86		82,631.84
Total earnings.....	2,195,041.96	2,142,881.17	52,160.79	
EXPENDITURES.				
Operating expenses of railroad—				
General expenses on Isthmus.....	42,060.14	41,036.49	1,023.65	
Conducting transportation.....	278,961.09	259,886.66	19,074.43	
Maintenance of equipment.....	71,269.44	69,919.09	1,350.35	
Maintenance of way and structures.....	96,420.52	129,565.18		34,174.66
	487,741.19	500,437.42		12,696.23
Panama Railroad Steamship Line—				
Steamer expenses.....	421,952.82	399,459.46	22,493.36	
Agency expenses.....	110,362.40	101,613.52	8,748.88	
Charter of steamers.....	47,515.38		47,515.38	
	579,830.60	501,072.98	78,757.62	
Joint railroad and steamship expenses—				
General expenses.....	94,622.88	97,864.15		3,241.27
Foreign agency expenses.....	6,639.81	6,086.57	553.24	
Losses on cargo.....	2,272.81	5,589.24		3,316.43
Drawback on Colombian produce.....	21,061.82	19,523.07	1,538.75	
Ligherage.....	111,270.28	97,790.52	13,479.76	
Docks and wharves.....	22,111.75	30,344.59		8,232.84
Real estate and repairs to Colon buildings.....	16,792.46	16,446.71	345.75	
Taboga waterworks.....	20.00	2,537.94		2,517.94
	274,811.81	276,182.79		1,370.98
Total operating expenses.....	1,342,383.60	1,277,693.19	64,690.41	
Earnings over operating expenses.....	852,658.36	865,187.98		12,529.62

Statement of earnings and expenditures—Continued.

	1899.	1898.	Increase.	Decrease.
EXPENDITURES—continued.				
Taxes, and appropriations for depreciation and special repairs of steamers and tugs—				
Republic of Colombia for nonextension of road	\$10,000.00	\$10,000.00		
Depreciation of steamers	20,550.00	41,100.00		\$20,550.00
Depreciation of tugs	2,100.00	2,100.00		
Replacement of boilers and special repairs of steamers	41,361.59	57,000.00		15,638.41
Replacement of boilers and special repairs of tugs	3,000.00	3,000.00		
	77,011.59	113,200.00		36,188.41
Fixed charges—				
Subsidy to Republic of Colombia	25,000.00	25,000.00		
Redemption of subsidy bonds	128,340.00	121,080.00	\$7,260.00	
Interest on subsidy bonds	96,660.00	108,920.00		7,260.00
Interest on first mortgage bonds	80,415.00	85,241.25		4,826.25
Redemption of first mortgage bonds	150,000.00	150,000.00		
	480,415.00	485,241.25		4,826.25
Total—Taxes, appropriations and fixed charges	557,426.59	598,441.25		41,014.66
Net income	295,231.77	266,746.73	28,485.04	

Gross revenue receipts, expenditures and net earnings for 1899, compare, as under, with those of 1898:

	Earnings.	Operating expenses.	Earnings over operating expenses.	Taxes and appropriations for depreciations, etc.	Net earnings.
1899	\$2,195,041.96	\$1,342,388.60	\$852,658.36	\$77,011.59	\$775,646.77
1898	2,142,881.17	1,277,693.19	865,187.98	113,200.00	751,987.98
Increase in 1899	52,160.79	64,690.41			23,658.79
Decrease in 1899			12,529.62	36,188.41	
Decrease in fixed charges, 1899					4,826.25
Increase in profit, 1899					28,485.04

EARNINGS.**RAILROADS.**

The total net decrease of earnings of the railroad proper in 1899, as compared with 1898, of \$7,493.51, or 0.68 per cent, results principally from a decrease in number of passengers.

The most important decrease was in cargo from points in Central America to Europe of 13,000 tons. There were large increases in business from and to New York, the most important being: to San Francisco 6,000 tons, to South Pacific ports 1,500 tons, from San Francisco 7,300 tons, from South Pacific ports 15,000 tons.

There was a decrease of 1.64 per cent in earnings on west-bound business, and an increase of 0.56 per cent on east-bound business.

The following table shows the freight tonnage carried over the railroad in 1899 as compared with 1898:

Years ending December 31.	1899.	1898.	Increase per cent.	Decrease per cent.
Tons carried west bound ^a	146,496	144,182	1.60	
Tons carried east bound ^a	140,904	123,974	13.66	
Total, east and west bound ^a	287,400	268,156	7.18	

^a Ton of 2,000 pounds, or 40 cubic feet.

The gross earnings per ton moved on the road compare as follows:

	Year ending Decem- ber 31, 1899.	Year ending Decem- ber 31, 1898.	Decrease.
West bound	\$3.59	\$3.66	<i>Per cent.</i> 1.91
East bound	3.04	3.33	8.71
Average	3.32	3.51	5.41

Table No. 4, attached to this report, shows the origin and destination of the freight carried over the railroad, and Table No. 9 gives the classification of freight from the Pacific coast destined to all ports.

Compared with 1898, the total tonnage carried over the road in 1899 shows an increase of 19,244 tons, or 7.18 per cent, and the earnings an increase of \$13,148.87, or 1.40 per cent.

Of the total tonnage carried, 50.97 per cent was west bound and 49.03 per cent eastbound. In 1898 these proportions were 53.77 per cent and 46.23 per cent, respectively.

Through freight amounted to 85.85 per cent of the total number of tons carried, against 84.16 per cent in 1898.

In 1899 there was an increase of \$1,577.80, or 3.51 per cent, on mails and a decrease of \$2,573.33, or 17.19 per cent, on excess baggage.

The following statements show the number of passengers carried and the passenger earnings:

Classification.	Number of passengers carried.			Passenger earnings.		
	1899	1898.	Decrease.	1899.	1898.	Decrease.
			<i>Per cent.</i>			<i>Per cent.</i>
First class	4,230	4,868	13.11	\$23,713.85	\$25,106.90	5.65
Second class	68,002	112,936	39.79	39,933.12	58,198.07	31.38
Total	72,232	117,804	38.68	63,646.47	83,304.97	23.60

Average receipt for passenger.

Classification.	1899.	1898.	Increase.	Decrease.
First-class passengers:			<i>Per cent.</i>	<i>Per cent.</i>
Through	\$8.85	\$8.89	.....	0.45
Local	3.07	2.91	5.50	.....
Second-class passengers:				
Through	4.70	4.59	2.40	.....
Local .....	.54	.49	10.20	.....

The number of first-class passengers carried shows a decrease of 638, or 13.11 per cent, and \$1,393.55, or 5.55 per cent, in revenue. Second-class passengers show a decrease of 44,934 in number carried, or 39.79 per cent, and \$18,264.95 in earnings, or 31.38 per cent.

STEAMSHIP LINE.

The earnings of the steamship line show an increase of \$142,286.14, or 22.94 per cent, as compared with those of 1898, due mainly to the increase in traffic to and from San Francisco and South Pacific ports.

All classes of earnings, except treasure, show an increase, the most important being in freight earnings, of \$115,400.10, or 24.11 per cent, and passenger earnings of \$25,729.80, or 34.36 per cent.

JOINT RAILROAD AND STEAMSHIP RECEIPTS.

These receipts show a decrease of \$82,631.84, or 19.85 per cent.

Last year's receipts included the accumulated earnings for three years of machine shops and from sales of coal and materials, which accounts for the apparent decrease this year of \$38,064.29 in those receipts.

The decrease in interest and exchange of \$34,360.93 is due principally to the change in our accounting rate for conversion of Colombian silver into United States gold.

Although telegraph receipts decreased \$7,322.80, as compared with those of 1898, in which year there was an increase of \$7,803.40, due to war-message service, the receipts for 1899 of \$3,633.85 are about the average of other years.

The following table will show the number of tons lightered in Panama Bay during the years 1899 and 1898:

	1899.	1898.	Increase.	Decrease.
	Tons.	Tons.	Per cent.	Per cent.
Merchandise.....	147,663	142,536	3.60	
Lumber.....	863	872		1.03
Coal.....	5,904	1,963	200.76	
Total.....	154,430	145,371	6.23	

EXPENDITURES.

The revenue expenditures of 1899 and 1898 compare as under:

	1899.	1898.	Increase.	Decrease.
Railroad.....	\$487,741.19	\$500,437.42		\$12,696.22
Steamship line.....	579,830.60	501,072.98	\$78,757.62	
Joint railroad and steamship expenses.....	274,811.81	276,182.79		1,370.98
Taxes and appropriations.....	77,011.59	113,200.00		36,188.41
Total.....	1,419,395.19	1,390,893.19	28,502.00	

This table shows there is an increase of \$28,502 in total revenue expenditures against an increase of \$52,160.79 in earnings.

RAILROAD.

CONDUCTING TRANSPORTATION.

This department shows an increase of \$19,074.43, or 7.34 per cent, due to the advance of 45 cents, silver, per day in wages of freight handlers and to the increase of 19,244 tons in total transported.

MAINTENANCE OF EQUIPMENT.

These expenses show an increase of \$1,350.35, or 1.93 per cent over 1898, due to extensive repairs to freight and passenger cars.

MAINTENANCE OF WAY AND STRUCTURES.

The extensive repairs and improvements begun in 1897 and continued in 1898 have been completed this year, and with a decrease in these accounts amounting to \$34,174.66.

STEAMSHIP LINE.

There is an increase of expenditure in this department amounting to \$78,757.62, or 15.72 per cent, which is accounted for by the cost of chartering additional steamers to carry increase of 34,925 tons, and other expenses incidental thereto.

JOINT RAILROAD AND STEAMSHIP EXPENSES.

These expenses show a decrease of \$1,370.98, or 0.50 per cent. There were decreases in general expenses of \$3,241.27; losses on cargo, \$3,316.43, and repairs to docks and wharves of \$8,232.84, which were offset by increase in lighterage expenses of \$13,479.76.

GENERAL REMARKS.

During the period from 1894 to 1899, inclusive, the percentage of total expenses to gross earnings was as follows:

	Per cent.
1894.....	69.93
1895.....	61.63
1896.....	53.94
1897 (including taxes and appropriations for depreciation, etc.).....	61.12
1898 (including taxes and appropriations for depreciation, etc.).....	64.91
1899 (including taxes and appropriations for depreciation, etc.).....	64.66

This year has been remarkable for a progressive increase in the price of materials and supplies of every kind, and also in the wages of laborers on the Isthmus.

The disturbed political conditions in the Republic of Colombia have resulted in reducing the number of natives available for service, rendering it necessary to import about 50 men from Fortune Island to help in handling cargo until the return of peace.

During the summer yellow fever prevailed in South America, and was introduced into Panama by the soldiery and other arrivals. Yet it did not affect the citizens nor spread among the employees of the railroad company or those of the canal company. Nevertheless the fear of infection did have a bad effect upon the passenger business of your road, which was also diminished by the lessened activity of the canal company.

On February 1, 1899, it became necessary to raise the wages of common labor 45 cents, silver, per day on the Isthmus, in addition to the increase made March 16, 1898.

Under these circumstances economies which would otherwise have been experienced do not appear; yet by an increase in the tonnage transported the cost per ton has been materially lessened. Although there was a decrease in the earnings of your railroad from tonnage delivered to the European lines of \$69,000, the increased tonnage delivered to your own steamship line, amounting to 34,130 tons, resulted in a gain of \$100,390.

This gain has been secured at an excessive cost by a weekly service which compelled the chartering of foreign ships, no American bottoms having been obtainable, but the results demonstrate that it is important to the success of your property to increase the traffic by vessels of your own, capable of handling much more than the present tonnage of your steamship line.

The important improvements carried out upon the track and roadbed of the railroad during the past two years have placed it in a condition to be maintained for some years with a minimum of expenditure; the rolling stock, buildings, and floating equipment now require similar attention, but involving only a comparatively small sum, the shops and warehouses having been extensively repaired during this year.

A machine for the destruction of weeds and grass in the track by sprinkling them with a solution of arsenic and saltpeter has been put in use, with results which promise an economy in the maintenance of way.

The premises of the railroad company at Colon are now lighted by current supplied from the plant of the Colon Electric Illuminating Company to the railroad company's wires, under a contract.

New offices for the train dispatcher, road master, and land department have been erected adjacent to the general offices at Colon, removing them from the floor of the warehouse, where the space was required for the storage of coffee and other cargo. A new passenger station has also been built at Colon.

The cost of these improvements has been charged to "Repairs and renewals."

The sums which have been heretofore appropriated on account of the depreciation of the floating equipment appear unduly large to be continued, in view of the enhanced value of such property at present, and it will be seen that a smaller charge has been determined upon as ample to accord with the actual condition of the steamships and tugs.

Four of the lighters will be condemned this year; the others are being put in good condition. Two locomotives have been dismantled this year, the boilers having been used for the machine shop.

Attention is invited to the charges paid to the Colombian Government. In addition to the annual payment in cash of \$260,000, this company has transported free several train loads of troops for the suppression of the rebellion, and 9,511 persons on passes issued by the Government. Besides, according to the contract with the Government, we have transported 24,500 tons of Colombian produce at half the regular rates, one-half of the charges being refunded in drawbacks.

The officers and employees of the company are entitled to the thanks of the board for their devotion to the company's interests.

Respectfully,

CHARLES PAINE, *General Manager.*

TABLE A.—*Balance sheet, December 31, 1899.*

RESOURCES.		
Cost of road, real estate, and equipment		\$9,774,951.74
New terminal at La Boca		1,386,315.91
La Boca branch, electric-light plant, office buildings, etc.		92,367.78
Floating equipment:		
Steamers <i>Alliance</i> , <i>Finance</i> , and <i>Advance</i> , reduced value,		
December 31, 1898	\$287,961.27	
Depreciation fund	20,550.00	
		\$267,419.27
Tugs and lighters, reduced value, December 31, 1898	443,679.53	
Depreciation fund for tugs	2,100.00	
		441,579.53
		708,998.80
Total		11,962,634.23
Bonds in treasury:		
247 6 per cent Panama Railroad Company sinking fund subsidy bonds	247,000.00	
989 4½ per cent twenty-year gold sinking fund bonds	989,980.00	
		1,186,980.00
On deposit with financial agents for redemption of bonds:		
6 per cent subsidy bonds	12,000.00	
4½ per cent gold sinking fund bonds	1,263.83	
		13,263.83
Advance of subsidy to Republic of Colombia		1,482,000.00
Current assets:		
Cash in banks and with agents	888,006.14	
Coal and supplies on hand	161,275.74	
Due from connecting companies	95,740.49	
Due from United States Government	16,421.60	
Due from companies and individuals	144,080.81	
Accrued interest on deposits	6,386.67	
Accrued interest on securities owned	2,738.75	
General average accounts	14,671.99	
Unadjusted accounts	58,100.95	
		1,387,423.14
		16,032,301.20
LIABILITIES.		
Capital stock		\$7,000,000.00
4½ per cent, twenty-year sinking fund gold bonds (authorized issue, \$4,000,000):		
Issue to date (2,982 bonds, less 141 bonds previously redeemed)	\$2,821,000.00	
Less drawn for redemption in 1899	140,000.00	
		2,681,000.00
Total capital stock and mortgage liabilities		9,681,000.00
6 per cent gold sinking fund subsidy bonds ^a		1,482,000.00
Due contractors, new terminal at La Boca ^b		1,179,924.96
Bonds drawn for redemption not presented for payment:		
4½ per cent, twenty-year gold bond	1,072.50	
6 per cent subsidy bonds	13,000.00	
		14,072.50
Accrued interest on bonds:		
4½ per cent, twenty-year gold bonds (1,763 bonds)	19,833.75	
6 per cent subsidy bonds	14,820.00	
		34,653.75

^a 1,482 6 per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$1,482,000, issued November 1, 1880, fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company, first, to the payment of the interest, and second, as a cumulative sinking fund for the redemption of the principal; the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

^b Of this amount \$916,000 will become due in 1902, and is secured by an equivalent amount of the company's new 4½ per cent bonds as collateral; \$113,792.98 becomes due March 31, 1900, \$22,824.90 on June 30, 1900, and \$127,307.08 on December 31, 1900. The total may be reduced in the meantime at the option of the company by payments on account.

S. DEMING, *Treasurer.*

Funds for redemption of bonds:		
4½ per cent, twenty-year gold bonds.....	\$82,631.33	
6 per cent subsidy bonds.....	69,796.00	
		\$132,426.33
Due Republic of Colombia:		
Department of Panama.....	21,875.00	
Government of Colombia.....	1,666.67	
		23,541.67
Fund for replacement of boilers and special repairs to tugs.....		9,000.00
Current liabilities:		
Isthmus drafts not presented.....	21,963.88	
Coupons not presented.....	3,236.00	
Audited vouchers.....	57,428.50	
Unclaimed dividends.....	307.00	
Due deceased or missing employees.....	2,289.17	
		85,228.05
Balance to credit of profit and loss.....		3,390,398.94
Total.....		16,032,301.20

TABLE B.—Profit and loss account, December 31, 1899.

DEBIT.	
To operating expenses.....	\$1,342,383.60
Taxes and appropriations for depreciation and special repairs of steamers and tugs.....	77,011.59
Fixed charges.....	480,415.00
Cost of 2 locomotives, dismantled during the year, less value of parts fit for use.....	10,182.10
Adjustment of accounts of previous years.....	5,975.39
Uncollectible accounts written off.....	123.85
Balance, assets over liabilities, December 31, 1899.....	3,890,398.94
Total.....	5,306,490.47
CREDIT.	
By balance, December 31, 1896.....	\$2,971,448.51
Gross earnings.....	2,195,041.86
4½ per cent, twenty-year sinking fund gold bonds redeemed.....	140,000.00
Total.....	5,306,490.47

TABLE NO. 1.—Comparative statement of operating expenses of railroad for the years ending December 31, 1898 and 1899.

	1899.	1898.
General expenses on the Isthmus:		
Advertising.....	\$15.60	\$14.60
Cablegrams.....	890.84	598.31
Hospital service.....	7,597.02	6,289.09
Legal expenses.....	2,930.00	2,940.90
Salaries of officers.....	12,331.08	11,403.18
Salaries of clerks and attendants.....	13,286.24	12,880.60
Office expenses, stationery and printing.....	1,615.77	1,828.83
Other expenses.....	3,434.09	5,133.18
Total.....	42,090.14	41,036.49
Conducting transportation:		
Advertising.....	1,262.40	1,423.00
Clearing wrecks.....	25.88	39.41
Engineers and firemen.....	22,391.26	22,537.36
Fuel for locomotives.....	24,521.30	27,224.47
Injuries to persons.....	171.84	78.46
Labor—Colon and Panama stations.....	96,536.49	73,287.87
Oil, tallow, waste and other supplies for locomotives.....	1,504.86	1,507.09
Roundhouse men.....	5,143.05	5,128.32
Superintendence and clerks.....	3,159.90	4,201.87
Switchmen, yardmen, and yard watchmen.....	26,346.16	29,306.16
Station agents and clerks.....	61,842.04	60,623.44
Station supplies and expenses.....	5,495.15	2,943.40
Stationery and printing.....	2,581.76	2,643.23
Train conductors, baggagemen, flagmen, and brakemen.....	15,341.04	15,932.34
Train supplies and expenses.....	2,132.85	2,014.12
Telegraph expenses.....	6,968.99	6,143.20
Water supply for locomotives.....	2,727.39	3,992.88
Other expenses.....	868.78	859.94
Total.....	278,961.09	259,886.66

TABLE NO. 1.—Comparative statement of operating expenses of railroad for the years ending December 31, 1898 and 1899—Continued.

	1899.	1898.
Maintenance of equipment:		
Repairs of freight cars.....	\$36,460.48	\$32,961.68
Repairs of locomotives.....	10,442.96	13,762.71
Repairs of passenger cars.....	7,208.29	5,715.98
Repairs and renewals of shop machinery and tools.....	5,026.07	4,293.29
Superintendence and clerks.....	11,938.96	13,023.42
Stationery and printing.....	192.68	162.01
Total.....	71,269.44	69,919.09
Maintenance of way and structures:		
Repairs of bridges and culverts.....	5,956.32	5,806.14
Repairs and renewal of general offices.....	4,250.96	570.13
Repairs of road machinery and tools.....	2,029.76	2,216.16
Repairs of roadway and track.....	29,847.83	53,567.07
Renewals of switches and frogs.....	535.52	429.91
Renewal of spikes and rail fastenings.....	4,837.95	8,883.03
Repairs and renewal of station buildings.....	10,579.05	4,676.30
Repairs of shop buildings, water and fuel stations.....	15,115.36	2,806.80
Repairs of section houses, tool houses, etc.....	13.87	55.35
Renewal of ties.....	6,099.34	35,379.02
Repairs of telegraph.....	1,758.86	1,159.92
Removal of weeds, brush, grass, etc.....	5,648.99	4,724.25
Superintendence and clerks.....	8,901.36	9,133.63
Stationery and printing.....	295.07	209.03
Other expenses.....	55.38	100.14
Total.....	95,420.52	129,595.18

a Credit.

[Extracts from the fifty-first annual report of the Panama Railroad Company.]

NEW YORK, March 28, 1901.

To the stockholders of the Panama Railroad Company.

GENTLEMEN: The year has been one of the most important in the history of the company. The report of the general manager, with the accompanying statement of earnings and expenses for the calendar year 1900, and the treasurer's balance sheet and transcript of profit and loss account, will furnish you detailed information upon the physical and financial aspects of the company's properties and affairs.

The capital stock issue remains unchanged; the new $4\frac{1}{2}$ per cent first mortgage gold bond issue has been reduced by redemption in the sum of \$139,000 par value of such bonds; and the 6 per cent subsidy bond issue has also been reduced by redemption in the amount of \$136,000 par value of such bonds.

In my last report I advised you of the practical completion of the new port and terminals at La Boca; but naturally in a work of this magnitude (perhaps the largest of its character on the Pacific side of the continent) additional improvements and work, including the deepening of the channel and basins, became desirable in order to bring the port and terminals to their fullest utility. This has been accomplished; the port is now open to commerce, and ships for the first time in the history of the Panama route now load and discharge directly at the dock.

At our request the United States Hydrographic Office has made a survey and chart of the harbor and port of La Boca, and very considerably has delayed publication of the Official Government Chart in order to include therein the results established by the company's continued operations during the last year, and which results were in December last verified by the surveying party detailed from the United States steamer *Bancroft*.

As an incident of this most important work, we have deemed it of importance that the Republic of Colombia should make formal declaration of its acceptance of the port and pier as being in full compliance with the terms of our concession in that regard. Throughout the year we have conducted negotiations with Colombia and have reached a satisfactory agreement by which the Government has made and published a legislative decree of acceptance and approval. All payments in this connection have been made by the company, and the company is now relieved from the obligation henceforth to pay \$10,000 per annum, which by the concession it was required to pay until the completion of these improvements.

In due course the cost of the La Boca port and terminals will be capitalized into

the new 4½ per cent first mortgage gold bonds, which were authorized to be issued for this purpose under the existing mortgage.

During the past year the long standing contract with the Pacific Mail Steamship Company expired by limitation, and this company, for the first time in a generation, regained its complete liberty of action.

The great changes which had come about in the traffic world had convinced the directors that the time had arrived to inaugurate the "open-door policy" for the Panama route, and we therefore declined to confer upon any one steamship line exclusive privileges over the Panama route. We accordingly negotiated and recently have executed satisfactory traffic agreements with several important steamship lines on the Pacific, and also have renewed the long standing contracts with the seven Atlantic lines now serving the Panama route. The same privilege upon equal terms was offered by us to the Pacific Mail Steamship Company, but that company expressed its unwillingness to contract other than upon an exclusive basis.

The inauguration of the policy above referred to, together with the growth of traffic, brings us to the consideration of additions to our steamship service, and we are seriously considering the construction of new ships for our Atlantic line. Upon the Pacific side we have met the requirements of our increasing traffic by the charter of vessels of American registry.

We fully appreciate that the adoption of this new policy involves additional expenditures and vigilant attention, and that the operations are somewhat of an experimental nature, but we expect good results ultimately to flow from this larger and more progressive policy.

A full traffic agency at San Francisco has been established during the year.

The possible extension of our Atlantic service to Atlantic ports other than New York is also under examination.

We fully recognize the importance of developing traffic on the Atlantic seaboard, and especially to furnish the Gulf States an outlet for their products via the Isthmus route.

The net earnings for the year represent 6½ per cent upon the capital stock.

I refer you to the accompanying reports for more detailed particulars.

Respectfully submitted.

J. EDWARD SIMMONS, *President.*

PANAMA RAILROAD COMPANY,
New York, March 16, 1901.

To the President of the Panama Railroad Company.

SIR: I respectfully submit the following report of the business and operations of the Panama Railroad Company for the year ending December 31, 1900, and of the condition of the company's property and finances at the close of the year.

The operations of the year show the following results:

Statement of earnings and expenditures.

	1900.	1899.	Increase.	Decrease.
EARNINGS.				
Railroad:				
Colon to Panama—				
Freight	\$505,898.92	\$526,382.19		\$20,483.27
Treasure	9,376.45	6,688.44	\$2,708.01	
Mails	46,653.70	41,648.47	4,005.23	
Extra baggage	8,546.59	6,827.62	1,718.97	
Passengers	38,614.86	30,677.08	7,937.78	
	608,090.52	612,208.80		4,118.28
Panama to Colon—				
Freight	599,178.19	427,656.12	171,523.07	
Treasure	12,868.20	15,702.09		2,833.89
Mails	5,116.47	4,671.58	244.89	
Extra baggage	7,890.79	5,564.88	2,325.91	
Passengers	37,852.07	32,969.39	4,882.68	
	662,905.72	486,763.06	176,142.66	
Total earnings of railroad	1,270,996.24	1,098,966.86	172,029.38	

Statement of earnings and expenditures—Continued.

	1900.	1899.	Increase.	Decrease.
EARNINGS—continued.				
Railroad—Continued.				
Panama Railroad Steamship Line—				
Atlantic service—				
Freight	\$769,225.62	\$594,131.92	\$175,093.70	
Treasure	3,044.02	7,502.21	541.81	
Mails	60,618.30	53,189.72	7,428.58	
Extra baggage	2,047.63	1,949.85	97.78	
Passengers	128,224.78	100,821.00	27,413.78	
Miscellaneous	7,814.88	5,075.38	2,739.50	
	975,985.23	762,470.06	213,515.15	
Pacific service—				
Freight	5,922.06		5,922.06	
Passengers	155.00		155.00	
	6,077.06		6,077.06	
Joint railroad and steamship receipts	402,136.18	333,605.02	68,531.16	
Total earnings	2,655,194.71	2,196,041.96	460,152.75	
EXPENDITURES.				
Operating expenses of railroad:				
General expenses on Isthmus	40,216.25	42,090.14		\$1,873.00
Conducting transportation	309,516.83	278,961.09	30,555.74	
Maintenance of equipment	116,518.87	71,269.44	45,249.43	
Maintenance of way and structures	95,810.60	95,420.52	390.08	
	562,062.55	487,741.19	74,321.36	
Panama Railroad Steamship Line:				
Atlantic service—				
Steamer expenses	576,391.98	421,952.82	154,439.14	
Agency expenses	116,689.67	110,362.40	6,327.27	
Charter of steamers	140,634.79	47,515.38	93,119.41	
	833,716.42	579,830.60	253,885.82	
Pacific Service—				
Steamer expenses	3,801.11		3,801.11	
Agency expenses	8.92		8.92	
Charter of steamers	6,650.00		6,650.00	
	10,460.03		10,460.08	
Joint railroad and steamship expenses	321,164.78	274,811.81	46,352.97	
Total operating expenses	1,727,403.78	1,342,383.60	385,020.18	
Earnings over operating expenses	927,790.93	852,658.36	75,132.57	
Taxes, and appropriations for depreciation and special repairs of steamers and tugs:				
Republic of Colombia for nonextension of road		10,000.00		10,000.00
Depreciation of steamers		20,550.00		20,550.00
Depreciation of tugs	2,100.00	2,100.00		
Replacement of boilers and special repairs of steamers		41,361.59		41,361.59
Replacement of boilers and special repairs of tugs	3,000.00	3,000.00		
	5,100.00	77,011.59		71,911.59
Fixed charges:				
Subsidy to Republic of Colombia	25,000.00	25,000.00		
Redemption of subsidy bonds	136,080.00	128,340.00	7,740.00	
Interest on subsidy bonds	88,920.00	96,660.00		7,740.00
Interest on first mortgage bonds	75,926.25	80,415.00		4,488.75
Redemption of first mortgage bonds	150,000.00	150,000.00		
	475,926.25	480,415.00		4,488.75
Total taxes, appropriations, and fixed charges	481,026.25	557,426.59		76,400.34
Net income	446,764.68	296,231.77	151,532.91	

Gross revenue receipts, expenditures, and net earnings for 1900 compare, as under, with those of 1899:

	Earnings.	Operating ex- penses.	Earnings over operat- ing expenses.	Taxes and appropria- tions for de- preciations, etc.	Net earnings.
1900.....	\$2,655,194.71	\$1,727,403.78	\$927,790.93	\$5,100.00	\$922,690.93
1899.....	2,195,041.96	1,342,383.60	852,658.36	77,011.59	775,646.77
Increase in 1900	460,152.75	385,020.18	75,132.57		147,044.16
Decrease in 1900				71,911.59	
Decrease in fixed charges, 1900.....					4,488.75
Increase in profit, 1900.....					151,582.91

EARNINGS.

RAILROAD.*

The total net earnings of the railroad proper in 1900, as compared with 1899, show an increase of \$172,029.38, or 15.65 per cent, resulting principally from increased freight traffic, east bound; there were also large increases in nearly all other kinds of traffic.

The greatest increase in east-bound traffic was from South Pacific ports to New York, of 36,000 tons. Cargo from points in Central America to Europe increased 13,000 tons; from San Francisco to New York 11,000 tons. West-bound traffic to points in Central America and Mexico increased 4,700 tons, while traffic to San Francisco decreased 3,000 tons.

There was a decrease of 0.67 per cent in earnings on west-bound business, and an increase of 36.19 per cent on east-bound business.

The following table shows the freight tonnage carried over the railroad in 1900 as compared with 1899:

[Ton of 2,000 pounds, or 40 cubic feet.]

	Year end- ing De- cember 31, 1900.	Year end- ing De- cember 31, 1899.	Increase.
West bound.....	153,758	146,496	Per cent. 4.96
East bound.....	203,619	140,904	44.51
Total	357,377	287,400	24.35

The gross earnings per ton moved on the road compare as follows:

	Year end- ing De- cember 31, 1900.	Year end- ing De- cember 31, 1899.	Decrease.
West bound.....	\$3.29	\$3.59	Per cent. 8.36
East bound.....	2.94	3.04	3.29
Average east and west bound.....	3.09	3.32	6.98

Table No. 4, attached to this report, shows the origin and destination of the freight carried over the railroad.

Compared with 1899, the total tonnage carried over the road in 1900 shows an increase of 89,977 tons, or 24.35 per cent, and the earnings an increase of \$151,039.80, or 15.83 per cent.

Of the total tonnage carried, 43.02 per cent was west bound and 56.98 per cent east bound. In 1899 these proportions were 50.97 per cent and 49.03 per cent respectively.

The proportion of through traffic to the total tonnage was 87.11 per cent; in 1899 through freight amounted to 85.85 per cent.

Earnings from transportation of mails amounted to \$50,770.17, an increase of \$4,250.12, or 9.13 per cent, over 1899; receipts from excess baggage increased \$4,044.88, or 32.64 per cent.

The following statements show the number of passengers carried and the passenger earnings:

Classification.	Number of passengers carried.			Passenger earnings.		
	1900.	1899.	Increase.	1900.	1899.	Increase.
First class	5,590	4,230	<i>Per cent.</i> 32.15	\$31,375.56	\$38,713.85	<i>Per cent.</i> 32.31
Second class	77,642	68,002	14.18	45,091.37	39,933.12	12.92
Total	83,232	72,232	15.23	76,466.93	68,646.47	20.14

Average receipt per passenger.

Classification.	1900.	1899.	Increase.	Decrease.
First class:			<i>Per cent.</i>	<i>Per cent.</i>
Through	\$8.97	\$8.85	1.36	
Local	3.44	3.07	12.05	
Second class:				
Through	1.92	4.70		59.15
Local .....	.61	.54		5.56

First-class passengers increased 1,360, or 32.15 per cent, in number, and \$7,662.21, or 32.31 per cent, in earnings. Second-class passengers increased 9,640 in number, or 14.18 per cent, and \$5,158.25, or 12.92 per cent, in earnings. The marked decrease in the average receipt per passenger for second-class through passengers was due to the low rate obtained on laborers proceeding from Jamaica to Guayaquil.

STEAMSHIP LINES.

The Atlantic line also shows the effect of the increased freight traffic, mentioned elsewhere, from South Pacific ports and San Francisco to New York, the earnings amounting to \$769,225.62 in 1900, an increase of \$175,093.70, or 29.47 per cent, as compared with those of 1899.

Of the total tonnage transported, 119,568 tons were carried by the company's steamers and 72,031 tons by chartered steamers.

Passenger earnings were greater in 1900 by \$27,613.78, or 27.44 per cent, than in the previous year, and mail earnings increased \$7,428.58, or \$13.95 per cent.

The total earnings of the Atlantic line from all sources was \$975,985.23, an increase of \$213,515.15, or 28 per cent.

The steamship *St. Paul*, the first chartered ship of our Pacific line, sailed from San Francisco December 18 and arrived at La Boca wharf January 1, 1901.

JOINT RAILROAD AND STEAMSHIP RECEIPTS.

The total net result of earnings under this heading increased \$68,531.16, or 20.54 per cent.

The following table will show the number of tons lightered in Panama Bay during the years 1900 and 1899:

	1900.	1899.	Increase.	Decrease.
	<i>Tons.</i>	<i>Tons.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Merchandise	188,936	147,663	27.95	
Lumber	255	863		70.45
Coal	5,682	5,904		3.76
	194,873	154,430	26.19	

EXPENDITURES.

The revenue expenditures of 1900 and 1899 compare as under:

	1900.	1899.	Increase.	Decrease.
Railroad	\$562,062.55	\$487,741.19	\$74,321.36	.....
Steamship line:				
Atlantic service	833,716.42	579,830.60	253,885.82	.....
Pacific service	10,460.08		10,460.08	.....
Joint railroad and steamship expenses	321,164.78	274,811.81	46,352.97	.....
Taxes and appropriations	5,100.00	77,011.59		\$71,911.59
Total	1,732,508.78	1,419,396.19	313,108.59	.....

This table shows an increase of \$313,108.59 in total revenue expenditures, while there was an increase of \$460,152.75 in total earnings.

RAILROAD.

CONDUCTING TRANSPORTATION.

The expenses of this department, compared with 1899, show an increase of \$30,555.74, or 10.95 per cent. The tonnage moved increased 69,977 tons, or 24.35 per cent.

MAINTENANCE OF EQUIPMENT.

The cost of repairs and maintenance of the rolling stock and other equipment was \$116,518.87 in 1900, an increase of 63.49 per cent as compared with the previous year. The machine shop at Colon has been furnished with a new cupola for the foundry, a new pipe-cutting machine, a new planer and matcher for the car shop, and an exhaust fan for carrying the shavings from the carpenter shop to the boilers.

The repairs effected in the shops comprise, besides ordinary running repairs, the complete renewal of 7 locomotives, including the supply of 2 new boilers.

Two hundred and sixteen freight cars have received general repairs; 170 box cars have received new roofs.

Twenty-four passenger cars received general repairs.

A critical inventory shows that 7 box cars and 2 flat cars are missing from the series of numbers, although none have been destroyed during the past year. As no positive inventory has been taken before this during the term of the present superintendent, it is believed that they were destroyed at some earlier date.

MAINTENANCE OF WAY AND STRUCTURES.

The total expenditures charged to this department in 1900 were \$95,810.60, an increase of only \$390.08, or 0.04 per cent, although the following considerable repairs were made:

Bridge No. 15 has been replaced by a new iron bridge, at a cost of \$9,320.

The south abutment of bridge No. 49 was rebuilt.

Six culverts were also rebuilt, and all iron bridges between Colon and Panama repainted.

Twenty-six thousand nine hundred and seventy-five feet of drain tile have been laid in cuttings.

Angle plates have been placed in the track between Corozal and Panama, a distance of 2.8 miles, which completes the fishing of the rails upon the main line.

A new track, adjacent to the wharf at La Boca, 1,100 feet long, has been laid down.

The deviation of the main line between Culebra and Pedro Miguel has been completed, and was put in use on March 3, 1901.

The reservoir at Mount Hope has been deepened by raising the embankments around it, affording a considerable addition to the supply.

The water from a spring on Mount Ancon has been conveyed to the tanks at La Boca, affording an increase of about 5,000 gallons per day.

The capacity of the reservoir at Colon has been increased by raising the walls 3 feet, giving increased storage of about 73,000 gallons.

The whole cost of the apparatus for the "removal of weeds and grass" by sprinkling with poisons has been charged to that account, showing an apparent increase; but the cost of the year's work has really been \$1,673 less than in the previous year.

STEAMSHIP LINES.

The expenses of operating steamers between New York and Colon were \$833,716.42 in 1900, an increase of \$253,885.82, or 43.79 per cent, the increase in tonnage being 37.24 per cent.

As will appear from the accounts the steamships owned by this company have received very extensive repairs inside and outside; the use of the electric current has been extended to their night signals with satisfactory results.

JOINT RAILROAD AND STEAMSHIP EXPENSES.

The net increase in the expenditures under this head was \$46,352.97, or 16.87 per cent.

Lighterage expenses increased \$33,475.37, or 30.08 per cent.

Seven launches have received general repairs; 2 launches have been condemned as beyond repair, and others will be condemned this year.

The tug *Ancon* has been put in good repair to enable it temporarily to take the place of the *Bolivar*, which requires new boilers.

The water boat *Balboa* was condemned, her machinery removed, and the remains sold for scrap.

GENERAL REMARKS.

During the period from 1894 to 1900, inclusive, the percentage of total expenses to gross earnings was as follows:

	Per cent.
1894.....	69.93
1895.....	61.63
1896.....	53.94
1897 (including taxes and appropriations for depreciation, etc.).....	61.12
1898 (including taxes and appropriations for depreciation, etc.).....	64.91
1899 (including taxes and appropriations for depreciation, etc.).....	64.66
1900 (including taxes and appropriations for depreciation, etc.).....	65.25

An important improvement has taken place by the removal of the clerical force from the pier to the general offices at No. 24 State street, thereby consolidating the traffic department, to the great advantage of the patrons of the steamship line. This change resulted in the discontinuance of the general agency and the appointment of a terminal superintendent.

The falling off in freights delivered to European lines, which was noted in the annual report for 1899, was recovered this year, the earnings from freight to Europe having been slightly in excess of the receipts in 1898.

The local business of the road has been unfavorably affected by political disturbances on the Isthmus during the entire year.

The station at Monkey Hill has been named Mount Hope, to correspond with the name of the cemetery.

It has been necessary to charter ships on the Atlantic for 42 trips between Colon and New York in order to carry the freight offering. This is an expensive method of doing business, but nevertheless has afforded some profit to the railroad as well as to the steamship line.

The progressive increase in the price of materials referred to in the last annual report has continued through this year, appearing most conspicuously in the coal accounts.

We were obliged by the scarcity of labor to import about 30 men from Fortune Island, making in all 80 persons from there in the company's service.

Although yellow fever continued among the troops at Panama until late in the year, no citizens upon the Isthmus were affected, nor was there any case among our passengers.

On October 15 this company assumed charge of the work at La Boca.

There yet remains a small amount of rock to be excavated in the basin of evolution, but nothing to impede the use of the wharf, at which vessels of 3,000 tons burden, chartered by this company on the Pacific coast, are regularly discharged and loaded with great economy.

During the year the purchase of the shed and leasehold of pier No. 57, North River, New York, was accomplished, insuring control of that pier by a direct lease to the Panama Railroad Company from the dock department until 1911.

The officers and employees of the company have served its interests faithfully and energetically, deserving the thanks of the board for their efforts, to which are due the success of the year's operations.

Respectfully,

CHARLES PAINE, *General Manager.*

TABLE A.—Balance sheet, December 31, 1900.

RESOURCES.		
Cost of road, real estate, and equipment		\$9,774,851.74
New terminal at La Boca		1,660,829.07
La Boca branch, electric-light plant, office buildings, etc.		99,204.01
Floating equipment:		
Steamers <i>Alianza</i> , <i>Financé</i> , and <i>Advance</i> , reduced value December 31, 1899	\$267,419.27	
Tugs and lighters, reduced value December 31, 1899	\$441,579.53	
Depreciation fund for tugs, and cost of water boat <i>Balboa</i> and 4 lighters broken up	95,584.40	
	345,995.13	613,414.40
Total		12,148,199.22
Bonds in treasury:		
226 6 per cent Panama Railroad Company sinking fund subsidy bonds	226,000.00	
902 4½ per cent twenty-year gold sinking fund bonds	903,037.50	
		1,129,037.50
On deposit with financial agents for redemption of bonds:		
6 per cent subsidy bonds	11,000.00	
4½ per cent gold sinking fund bonds	7,648.45	
		18,648.45
Advance of subsidy to Republic of Colombia		1,846,000.00
Current assets:		
Cash in banks and with agents	840,024.02	
Coal and supplies on hand	175,250.66	
Due from connecting companies	71,175.81	
Due from United States Government	20,411.40	
Due from companies and individuals	112,839.34	
Accrued interest on deposits	8,423.10	
Accrued interest on securities owned	2,507.50	
General average accounts	910.82	
Unadjusted accounts, including purchase of leasehold pier 57, North River, until 1911	97,948.90	
Prepaid insurance and charter of steamers	20,169.72	
		1,349,661.17
Total		15,991,546.34
LIABILITIES.		
Capital stock		\$7,000,000.00
4½ per cent twenty-year sinking fund gold bonds (authorized issue, \$4,000,000):		
Issued to date (2,962 bonds, less 281 bonds previously redeemed)	\$2,681,000.00	
Drawn for redemption in 1900	139,000.00	
		2,542,000.00
Total capital stock and mortgage liabilities		9,542,000.00
6 per cent gold sinking fund subsidy bonds ^a		1,346,000.00
Due contractors, new terminal at La Boca ^b		911,568.95
Bonds drawn for redemption not presented for payment:		
4½ per cent twenty-year gold bond	6,485.00	
6 per cent subsidy bonds	11,000.00	
		17,485.00
Accrued interest on bonds:		
4½ per cent twenty-year gold bonds (1,662 bonds)	18,697.50	
6 per cent subsidy bonds	14,820.00	
		33,517.50
Funds for redemption of bonds:		
4½ per cent twenty-year gold bonds	63,713.45	
6 per cent subsidy bonds	69,875.00	
		133,588.45
Due Republic of Colombia:		
Department of Panama		21,875.00
Fund for replacement of boilers and special repairs to tugs		12,000.00
Current liabilities:		
Isthmus drafts not presented	33,619.00	
Coupons not presented	1,765.00	
Audited vouchers	67,750.48	
Unclaimed dividends	307.00	
Due deceased or missing employees	2,288.27	
		106,729.75
Balance to credit of profit and loss		3,867,881.69
		15,991,546.34

^a 1,346 6 per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$1,346,000, issued November 1, 1880, fall due November 1, 1910.

^b Of this amount \$876,000 will become due in 1903 and is secured by an equivalent amount of the company's new 4½ per cent bond as collateral. The total may be reduced in the meantime at the option of the company by payments on account.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1906, the same to be applied by the company: First to the payment of the interest, and second, as a cumulative sinking fund for the redemption of the principal, the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1, after each drawing, and thereby redeeming the whole issue of 1906.

S. DEMING, Treasurer.

TABLE B.—*Profit and loss account, December 31, 1900.*

DEBIT.	
To operating expenses.....	\$1,727,403.78
Appropriations for depreciation and special repairs of tugs.....	5,100.00
Fixed charges.....	475,926.26
Cost of water boat <i>Balboa</i> and 4 lighters, dismantled during the year, less value of parts fit for use and scrap.....	92,759.77
Supplies of no value written off.....	1,777.47
Uncollectible accounts written off.....	16,570.76
Balance, assets over liabilities, December 31, 1900.....	3,867,881.69
	6,186,369.72
CREDIT.	
By balance, December 31, 1899.....	\$3,890,398.94
Gross earnings.....	2,655,194.71
4½ per cent twenty-year sinking fund gold bonds, redeemed.....	189,000.00
Accounts of previous years settled.....	1,776.07
	6,186,369.72

TABLE NO. 1.—*Comparative statement of operating expenses of railroad for the years ending December 31, 1899 and 1900.*

	1900.	1899.
General expenses on the Isthmus:		
Advertising.....	\$15.12	\$15.00
Cablegrams.....	174.45	880.34
Hospital service.....	7,997.57	7,597.02
Legal expenses.....	2,574.93	2,930.00
Salaries of officers.....	11,678.07	12,531.08
Salaries of clerks and attendants.....	12,725.58	13,286.24
Office expenses, stationery, and printing.....	2,370.98	1,616.77
Other expenses.....	2,684.55	3,484.09
Total.....	40,216.25	42,090.14
Conducting transportation:		
Advertising.....	1,256.72	1,262.40
Clearing wrecks.....	72.46	25.88
Engineers and firemen.....	23,446.97	22,891.26
Fuel for locomotives.....	32,382.58	24,621.30
Injuries to persons.....	5,512.70	171.84
Labor—Colon and Panama stations.....	101,502.33	96,536.49
Oil, tallow, waste, and other supplies for locomotives.....	1,637.78	1,504.86
Roundhouse men.....	6,385.52	5,143.05
Superintendence and clerks.....	3,872.24	3,159.90
Switchmen, yardmen, and yard watchmen.....	27,883.17	26,846.16
Station agents and clerks.....	60,696.99	61,842.04
Station supplies and expenses.....	12,402.50	5,496.15
Stationery and printing.....	2,564.53	2,531.76
Train conductors, baggagemen, flagmen, and brakemen.....	14,371.82	15,341.04
Train supplies and expenses.....	2,717.57	2,122.85
Telegraph expenses.....	8,228.96	6,968.99
Water supply for locomotives.....	3,280.02	2,727.39
Other expenses.....	1,351.97	868.78
Total.....	309,516.83	278,961.09
Maintenance of equipment:		
Repairs of freight cars.....	51,307.00	36,460.48
Repairs of locomotives.....	30,986.38	10,442.96
Repairs of passenger cars.....	7,459.23	7,208.29
Repairs and renewals of shop machinery and tools.....	15,648.50	5,026.07
Superintendence and clerks.....	10,882.82	11,938.96
Stationery and printing.....	234.84	192.68
Total.....	116,518.87	71,269.44
Maintenance of way and structures:		
Repairs of bridges and culverts.....	23,852.66	5,966.32
Repairs and renewal of general offices.....	2,124.76	4,250.96
Repairs of road machinery and tools.....	2,208.68	2,029.76
Repairs of roadway and track.....	23,607.76	29,347.83
Renewals of switches and frogs.....	987.41	535.52
Renewals of spikes and rail fastenings.....	4,608.06	4,837.95
Repairs and renewal of station buildings.....	3,178.54	10,679.05
Repairs of shop buildings, water, and fuel stations.....	5,200.99	15,115.36
Repairs of section houses, tool houses, etc.....	231.11	13.87
Renewal of ties.....	13,758.36	6,099.34
Repairs of telegraph.....	1,691.28	1,758.86
Removal of weeds, brush, grass, etc.....	6,782.29	5,648.89
Superintendence and clerks.....	7,894.20	8,901.86
Stationery and printing.....	204.96	296.07
Other expenses.....	29.69	55.38
Total.....	95,810.60	95,420.52

TABLE NO. 2.—Comparative statement of expenses of steamship line—Atlantic service—for years ending December 31, 1899 and 1900.

	1900.	1899.
Steamer expenses:		
Port charges.....	\$20,353.72	\$17,821.19
Custom-house, entrance, clearance and consular fees, etc.....	\$12,753.88	\$11,396.67
Pilotage.....	6,620.89	5,864.52
Quarantine.....	979.00	560.00
Docking.....	3,426.29	1,571.18
Equipment, deck, engine, and commissary departments.....	10,889.11	8,502.35
Fuel.....	89,512.67	65,614.80
Feeding passengers and crew.....	56,279.69	42,069.04
Insurance.....	22,728.10	23,760.05
Labor on cargo.....	121,072.38	92,068.54
Labor on coal.....	12,196.91	11,624.25
Labor on ashes.....	1,291.00	902.10
Loss and damage.....	3,184.06	1,425.10
Oil and waste.....	1,623.80	973.80
Painting ship's bottom.....	2,815.04	1,736.88
Repairs, deck, engine, and commissary departments.....	84,481.85	32,620.90
Stores, deck, engine, commissary, and surgeon's departments.....	12,752.55	10,862.29
Stationery and printing.....	430.46	1,238.03
Telegrams and cables.....	1,463.54	1,604.10
Towage.....	1,535.30	1,383.00
Wages.....	116,968.22	94,656.55
Water.....	11,453.53	10,253.93
Washing.....	1,227.37	924.57
Other expenses.....	1,856.37	1,338.17
Total.....	576,891.96	421,952.82
Agency expenses:		
Advertising.....	2,885.15	1,895.70
Insurance.....	1,307.86	789.75
Labor.....	17,374.27	15,134.56
Office expenses.....	7,128.75	5,280.97
Repairs and rent of offices and wharves.....	55,315.73	53,781.77
Salaries of agents and clerks.....	29,546.51	30,931.65
Stationery and printing.....	1,486.61	1,058.81
Taxes.....	960.00	960.00
Other expenses.....	686.79	579.19
Totals.....	116,689.67	110,362.40

TABLE NO. 3.—Comparative statement of general expenses, New York, for the years ending December 31, 1899 and 1900.

	1900.	1899.
General expenses, New York:		
Advertising.....	\$1,659.64	\$1,483.46
General office expenses.....	9,765.18	8,254.79
Legal services and expenses.....	8,246.80	9,522.25
Salaries of general officers and clerks and directors' and committees' fees.....	73,784.66	71,140.27
Stationery and printing.....	1,881.20	1,314.05
Telegrams and cablegrams.....	2,199.83	1,430.81
Other expenses.....	3,141.81	1,477.25
Total.....	100,178.62	94,622.88

[Extracts from the fifty-second annual report of the Panama Railroad Company.]

NEW YORK, March 27, 1902.

To the stockholders of the Panama Railroad Company:

The past year was one of marked activity in the company's affairs. The report of the general manager, with the accompanying statement of earnings and expenses for the calendar year 1901, and the treasurer's balance sheet and transcript of profit and loss account, will furnish you detailed information upon the physical and financial aspects of the company's properties and business.

The capital stock issue of \$7,000,000 is unchanged.

The present outstanding bond issues are—

Sinking fund 6 per cent subsidy bonds:

Original issue of.....	\$3,000,000
(Being payment in advance until 1910 of the annual subsidy of \$225,000 to the Republic of Colombia.)	
Redeemed by annual sinking-fund drawings, including \$144,000 drawn in 1901.....	1,798,000
Outstanding at this date.....	1,202,000
Of those outstanding \$206,000 are owned by the company and held in its treasury.....	206,000
Leaving in the hands of the public.....	996,000

By the operation of the sinking-fund provision of this issue all of the bonds outstanding will be redeemed in 1908.

First mortgage 4½ per cent twenty-year gold bonds:

Authorized issue of.....	\$4,000,000
Issued to the public.....	\$2,504,000
Redeemed by annual sinking-fund drawings, including \$141,000 drawn in 1901.....	561,000
Held in the company's treasury.....	935,000
	4,000,000

Through the operation of the sinking fund this indebtedness will be reduced by 1917, the date of maturity of the mortgage, to \$1,199,000 and constitute the only mortgage lien upon the company's property.

Since the declaration of the previous dividend in January, 1893, in addition to the payment of \$250,000 annually to the Colombian Government and the redemption of \$561,000 of the company's 4½ per cent first-mortgage bonds out of gross earnings, the net earnings of the company amounted to \$2,072,359.42, or 29½ per cent upon the capital stock.

Of this sum your directors have applied to the development and permanent improvement of the company's property, in excess of the amount of the 2 per cent dividend paid in March last, \$1,755,509.01, in the purchase and betterment of its steamships and floating equipment, the construction of the La Boca pier, port, and terminal, the acquisition and restoration of dredging outfit, the installation of electric-light and ice plants, etc., and in general so improving the company's property that it is to-day in better physical condition than at any time in its history.

The port and terminal at La Boca having been completed and opened to commerce on January 1, 1901, its construction account was closed, showing a total cost of \$2,148,303.69, and that outlay capitalized into the company's 4½ per cent first-mortgage twenty-year gold bonds authorized for that purpose.

As contemplated by contracts between the companies, a lease has been effected, from the canal company, of the La Boca Branch Railroad and adjoining lands necessary for the operation of the terminal during the life of the railroad company's concession, or until 1966, upon mutually satisfactory terms. The use of dredges, clapnets, and materials necessary for the operation of the La Boca Terminal, belonging to the canal company, have also been secured under lease upon reasonable terms.

Owing to the severance of relations with the Pacific Mail Steamship Company the company put on a line of chartered vessels between Panama and San Francisco direct to maintain its coastwise traffic. Charters at the outset were difficult to obtain and very expensive, but later better conditions prevailed. The volume of coastwise traffic was materially increased during the year, but the very large outlay required to charter ships on both oceans to transport it was burdensome, and represented interest on a capital sum which, had it been applied by the company to the construction of new vessels, would have made the business highly remunerative.

The company's business was adversely affected by political disturbances on the Isthmus of so grave a character as to have occasioned the landing there by the United States Government, under its treaty obligations, of its armed forces to maintain free transit and to protect this company's property. To the discreet and energetic performance of this delicate duty by the naval officers to whom it was intrusted, in concert with the Colombian authorities, is to be attributed the fact that the company's property was not materially impaired. These facts, together with a prolonged labor strike in San Francisco and a materially reduced coffee output in Central America and Mexico during the season of 1900-1901, considerably affected net earnings, but these are extraordinary conditions not generally encountered.

During the year an important deviation of the railroad at Culebra, necessitated by canal construction, was completed and put in operation, but its entire cost was borne and paid by the canal company.

The condition of the company's property has been fully maintained and many improvements added, for the interesting particulars of which I refer you to the general manager's report.

There is now under consideration a further increase of the facilities of the La Boca pier, in order to more expeditiously handle the increasing tonnage.

The result of the company's operations during the last year, under what was referred to as the "open-door" policy, has not been as remunerative as desired, and the board of directors are considering changes in existing traffic arrangements and connections at Panama.

I refer you to the accompanying reports for more detailed particulars.

Respectfully submitted.

J. EDWARD SIMMONS, *President.*

PANAMA RAILROAD COMPANY,
New York, March 18, 1902.

To the president of the Panama Railroad Company.

SIR: I respectfully submit the following report of the business and operations of the Panama Railroad Company for the year ending December 31, 1901, and of the condition of the company's property and finances at the close of the year.

The operations of the year show the following results:

Statement of earnings and expenditures.

	1901.	1900.	Increase.	Decrease.
EARNINGS.				
Railroad:				
Colon to Panama—				
Freight	\$606,185.65	\$505,898.92	\$100,286.73	.....
Treasure	4,182.77	9,376.45	.....	\$5,193.68
Mails	52,254.08	45,658.70	6,600.38	.....
Extra baggage	9,696.40	8,546.59	1,149.81	.....
Passengers	39,236.81	38,614.86	621.95	.....
	711,554.71	608,090.52	103,464.19	.....
Panama to Colon—				
Freight	590,624.07	599,178.19	.....	\$8,554.12
Treasure	14,334.07	12,868.20	1,465.87	.....
Mails	4,780.47	5,116.47	.....	336.00
Extra baggage	7,460.37	7,890.79	.....	430.42
Passengers	36,417.87	37,852.07	.....	1,434.20
	653,616.85	662,905.72	.....	9,288.87
Total earnings of railroad	1,365,171.56	1,270,996.24	94,175.32	.....
Panama Railroad Steamship Line—				
Atlantic service—				
Freight	718,607.88	769,225.62	.....	50,617.74
Treasure	4,961.65	8,044.02	.....	3,082.37
Mails	79,015.83	60,618.30	18,397.53	.....
Extra baggage	2,186.69	2,047.63	139.06	.....
Passengers	154,571.58	128,284.78	26,386.80	.....
Miscellaneous	7,517.21	7,814.88	.....	297.67
	966,850.84	975,985.23	.....	9,134.39
Pacific service—				
Freight	349,277.38	5,922.06	343,355.27	.....
Passengers	16,425.25	155.00	16,270.25	.....
Extra baggage	120.18	.....	120.18	.....
	365,822.76	6,077.06	359,745.70	.....
Joint railroad and steamship receipts	498,863.81	402,136.18	96,727.63	.....
Total earnings	3,196,708.97	2,655,194.71	541,514.26	.....

Statement of earnings and expenditures—Continued.

	1901.	1900.	Increase.	Decrease.
EXPENDITURES.				
Operating expenses of railroad:				
General expenses on Isthmus	\$40,378.20	\$40,216.25	\$161.95	
Conducting transportation	878,022.88	809,516.83	68,506.05	
Maintenance of equipment	116,519.83	116,518.87	.96	
Maintenance of way and structures	95,341.62	95,810.60		\$468.98
	625,262.53	562,062.55	63,199.98	
Panama Railroad Steamship Line:				
Atlantic service—				
Steamer expenses	585,877.45	576,391.96	9,485.49	
Agency expenses	117,202.81	116,689.67	513.14	
Charter of steamers	164,929.38	140,634.79	24,294.59	
	868,009.64	833,716.42	34,293.22	
Pacific service—				
Steamer expenses	216,580.21	3,801.11	212,779.10	
Agency expenses	111,798.89	8.92	111,789.97	
Charter of steamers	279,659.33	6,650.00	273,009.33	
	606,038.43	10,460.03	597,578.40	
Joint railroad and steamship expenses	833,896.64	821,164.78	12,731.86	
Total operating expenses	2,435,207.24	1,727,403.78	707,803.46	
Earnings over operating expenses	761,501.73	927,790.93		166,289.20
Appropriations for depreciation and special repairs of tugs:				
Depreciation of tugs	2,100.00	2,100.00		
Replacement of boilers and special repairs of tugs	3,000.00	3,000.00		
	5,100.00	5,100.00		
Fixed charges:				
Subsidy to Republic of Colombia	25,000.00	25,000.00		
Redemption of subsidy bonds	144,240.00	136,080.00	8,160.00	
Interest on subsidy bonds	80,760.00	88,920.00		8,160.00
Interest on first-mortgage bonds	70,200.00	75,926.25		5,726.25
Redemption of first-mortgage bonds	150,000.00	150,000.00		
Interest on balance due La Boca wharf contractors	26,611.61		26,611.61	
	496,811.61	475,926.25	20,885.36	
Total, appropriations and fixed charges ..	501,911.61	481,026.25	20,885.36	
Net income	259,590.12	446,764.68		187,174.56

^a Includes wharfage at La Boca.

Gross revenue receipts, expenditures, and net earnings for 1901 compare, as under, with those of 1900:

	Earnings.	Operating expenses.	Earnings over operating expenses.	Appropriations for depreciations, etc.	Net earnings.
1901	\$3,196,708.97	\$2,435,207.24	\$761,501.73	\$5,100.00	\$756,401.73
1900	2,656,194.71	1,727,403.78	927,790.93	5,100.00	922,690.93
Increase in 1901	541,514.26	707,803.46			
Decrease in 1901			166,289.20		166,289.20
Increase in fixed charges, 1901					20,885.36
Decrease in profit, 1901					187,174.56

EARNINGS.

RAILROAD.

The total earnings of the railroad proper show an increase of \$94,175.32, or 7.41 per cent, in 1901 as compared with the previous year, the principal increase being in freight traffic west bound.

The largest increase in west-bound freight was on business to San Francisco, amounting to over 10,000 tons; freight to south Pacific ports increased 7,000 tons. East-bound freight shows a decrease of 14,000 tons although there was an increase of 12,000 tons in San Francisco freight.

There was an increase of 17.01 per cent in earnings on all west-bound traffic, and a decrease of 1.40 per cent on all east-bound traffic.

The following table shows the freight tonnage carried over the railroad in 1901 as compared with 1900:

[Ton of 2,000 pounds, or 40 cubic feet.]

	Year ending Decem- ber 31, 1901.	Year ending Decem- ber 31, 1900.	Increase.	Decrease.
	Tons.	Tons.	Per cent.	Per cent.
West bound.....	196,743	153,768	27.31	
East bound.....	189,841	208,619		6.77
Total.....	385,584	357,377	7.89	

The gross earnings per ton moved on the road compare as follows:

	Year ending Decem- ber 31, 1901.	Year ending Decem- ber 31, 1900.	Increase.	Decrease.
			Per cent.	Per cent.
West bound.....	\$3.10	\$3.29		5.78
East bound.....	3.11	2.94	5.78	
Average.....	3.10	3.09	.82	

Table No. 4, attached to this report, shows the origin and destination of the freight carried over the railroad.

Compared with 1900, the total tonnage carried over the road in 1901 shows an increase of 28,207 tons, or 7.89 per cent, and the earnings an increase of \$91,732.61, or 8.30 per cent. A comparison of 1900 with 1899 shows an increase in tonnage of 24.35 per cent, and in earnings of 15.83 per cent.

Of the total tonnage carried, 50.77 per cent was west bound and 49.23 per cent east bound. In 1900 these percentages were 43.02 per cent and 56.98 per cent, respectively.

The proportion of through traffic to the total tonnage handled was 81.70 per cent; in 1900 through freight amounted to 87.11 per cent. Of the through freight 55.12 per cent was New York business.

Earnings from mails amounted to \$57,034.55, an increase of \$6,264.38, or 12.34 per cent.

The following statement shows the number of passengers carried and the passenger earnings:

Classification.	Number of passengers carried.				Passenger earnings.			
	1901.	1900.	Increase.	Decrease.	1901.	1900.	Increase.	Decrease.
			Per cent.	Per cent.			Per cent.	Per cent.
First class.....	4,587	5,590		17.94	\$28,507.47	\$31,375.56		9.14
Second class.....	84,574	77,642	8.93		47,147.21	45,091.37	4.56	
Total.....	89,161	83,232	7.12		75,654.68	76,466.93		1.06

Average receipt per passenger.

Classification.	1901.	1900.	Increase.	Decrease.
First-class passengers:			<i>Per cent.</i>	<i>Per cent.</i>
Through	\$8.98	\$8.97	0.11	.....
Local	3.73	3.44	8.43	.....
Second-class passengers:				
Through	3.77	1.92	96.35	.....
Local .....	.47	.51	.....	7.84

First-class passengers decreased 1,003, or 17.94 per cent, in number and \$2,868.09, or 9.14 per cent, in earnings. Second-class passengers increased 6,932 in number, or 8.93 per cent, and \$2,055.84, or 4.56 per cent, in earnings. The increase of 96.35 per cent in the average receipt per second-class through passenger was due to the falling off in the movement of laborers from the West Indies to Guayaquil, carried at a low contract rate.

STEAMSHIP LINES.

The total earnings of the Atlantic Line from all sources was \$966,850.84, a decrease of \$9,134.39, or 0.94 per cent. Freight traffic shows a loss of \$50,617.74 in earnings, or 6.58 per cent, due to the large falling off in business from south Pacific ports. The decrease in freight receipts was nearly offset by an increase of \$18,397.53, or 30.35 per cent, in mail earnings, and an increase of \$26,336.80, or 20.54 per cent, in passenger earnings.

Of the total tonnage transported, 119,413 tons were carried by the company's steamers and 62,772 tons by chartered steamers.

The Pacific Line, inaugurated in December, 1900, was maintained during the year with the result as shown in the statement on page 8.

JOINT RAILROAD AND STEAMSHIP RECEIPTS.

The net result of the earnings of all the accounts grouped under this heading increased \$96,727.63 over 1900, or 24.05 per cent.

The following table will show the number of tons lightered in Panama Bay and handled on La Boca wharf during the year 1901 as compared with cargo lightered in 1900:

	1901.	1900.	Increase.	Decrease.
	<i>Tons.</i>	<i>Tons.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Merchandise.....	216,144	188,936	14.40	.....
Lumber.....	409	255	60.39	.....
Coal	22,286	5,682	292.22	.....
Total.....	238,839	194,873	22.56	.....

EXPENDITURES.

The revenue expenditures of 1901 and 1900 compare as under:

	1901.	1900.	Increase.
Railroad.....	\$625,262.53	\$562,062.55	\$63,199.98
Steamship line:			
Atlantic service	868,009.64	833,716.42	34,293.22
Pacific service	608,038.43	10,460.03	597,578.40
Joint railroad and steamship expenses.....	333,896.64	321,164.78	12,731.86
Appropriations for depreciation and special repairs to tugs	5,100.00	5,100.00	.....
Total	2,440,307.24	1,732,508.78	707,803.46

This table shows an increase of \$707,803.46 in total revenue expenditures, while there was an increase of \$541,514.26 in total earnings.

RAILROAD.

CONDUCTING TRANSPORTATION.

The expenses of this department show an increase of \$63,506.05, or 20.52 per cent, as compared with 1900. The tonnage moved increased 28,207 tons, or 7.89 per cent.

The accounts show a considerable increase in the cost of labor, of fuel, and of supplies, when compared with last year. There has been no increase in the rate for labor, but owing to the troubles on the Isthmus labor was less efficient, and it was necessary to maintain a larger force of Fortune Islanders than before. Coal and other supplies have commanded higher prices everywhere.

MAINTENANCE OF EQUIPMENT.

The total charges to this department in 1901 were \$116,519.83, as against \$116,518.87 in 1900, although more tonnage was handled than in the latter year.

In addition to ordinary running repairs, three of the older locomotives, which had been laid by some years ago, have been completely repaired and restored to service. The repairs of cars have been extensive; 38 flat cars have been converted into coal cars by the addition of sides, and 102 coal cars have had their sides raised to increase their capacity; 4 flat cars were fitted with 20-ton trucks.

The car shop has received new tools, as follows:

A patent band-sawing machine, with a machine for filing it.

An Acme bolt cutter.

And a self-feeding rip saw.

MAINTENANCE OF WAY AND STRUCTURES.

The track, bridges, and buildings have been maintained at a high standard, the expenditures being \$95,341.62, a decrease of \$468.98, or 0.49 per cent, as compared with 1900.

There have been laid in main track 100 tons of new rails of 70 pounds per yard; the rails thus released have been used for the construction of much-needed sidings at Colon and Panama.

The repairs of masonry have been continued, the abutments and aprons of 10 bridges having had complete repairs, and 4 culverts were rebuilt.

At Frijoles a battery of hydraulic rams has been installed, dispensing with the steam engine and pumper, effecting a saving of \$500 or more per annum.

A new 6-inch water main from the reservoir at Mount Hope to the railroad, 1,500 feet in length, has been laid, nearly doubling the daily supply available at Colon.

The car shed in rear of the old passenger station at Colon has been converted into a storage warehouse for freight.

STEAMSHIP LINES.

The operating expenses of the line between New York and Colon were \$868,009.64, an increase of \$34,293.22, or 4.11 per cent.

On December 16, 1900, the company was compelled to assume the operating of a steamship line between Panama and San Francisco at an unfavorable time, owing to the scarcity of vessels and the extremely high cost of charters; this was later complicated with a long-continued strike at San Francisco. During the latter part of the year, after the defeat of the strikers and a reduction in the cost of charters, the line became self-sustaining, as would appear in the accounts, if allowed the proportions previously allotted to that traffic. The importance of this line is indicated by the amount of tonnage carried, which was 85,541 tons, an increase of 21,362 tons over the same route during the previous year; the total amounted to 49.26 per cent of the tonnage of the Atlantic Steamship Line, and formed 22.18 per cent of the total carried across the Isthmus.

JOINT RAILROAD AND STEAMSHIP EXPENSES.

The combined expenditures under this head amounted to \$333,896.64, an increase of \$12,731.86, or 3.96 per cent.

The steamship *Bolivar* has been completely overhauled, receiving new boilers, pumps, etc., from New York.

Three steel launches, built at Chester, Pa., are now on the ways and nearly completed.

GENERAL REMARKS.

During the period from 1894 to 1901, inclusive, the percentage of total expenses to gross earnings was as follows:

	Per cent.
1894.....	69.93
1895.....	61.63
1896.....	53.94
1897 (including taxes and appropriations for depreciation, etc.).....	61.12
1898 (including taxes and appropriations for depreciation, etc.).....	64.91
1899 (including taxes and appropriations for depreciation, etc.).....	64.66
1900 (including taxes and appropriations for depreciation, etc.).....	65.25
1901 (including taxes and appropriations for depreciation, etc.).....	64.72
1901 (or including Pacific Line not operated in 1900).....	76.34

It is gratifying to find that the volume of traffic has been more than maintained, showing an increase over last year of 28,207 tons, in spite of the embarrassments under which all operations were conducted, by reason of the political disturbances which occasionally interrupted traffic, caused alarm among laborers, added to the cost of insurance of freight, and deterred timid passengers from taking the Isthmus route, for fear of delay or injury.

The improvement in the condition of the company's plant upon the Isthmus, which was begun several years ago, has been continued during the year 1901.

It became necessary to supply an electric-light plant at Colon, to supplement the deficient supply afforded by the Colon Illuminating Company, which was put into use very successfully at the beginning of the year; in connection with this is an ice machine, made necessary by the frequent failures of the supply heretofore received from Panama, which promises to be self-supporting.

The improved condition of the track seemed to warrant an increase in the loads carried in the freight cars; therefore the maximum load has been increased from 10 to 12 tons. This was equivalent to the addition of 184 cars in the capacity of the rolling stock, and has been of much benefit to the service.

The steamships owned by the company have been maintained in complete repair; it is believed that none of its property has depreciated.

The shipways, for the repairs and construction of the floating equipment at Panama, having completely decayed, they were renewed at La Boca under a shed available there, in connection with a convenient shop and tools, leased from the new Panama Canal Company; and the tools and shop force formerly at Panama have been consolidated with those at La Boca. At this establishment a large amount of work has been done.

The dredges, clapsnets, etc., leased from the Canal Company, for the maintenance of deep water at La Boca, have been very extensively repaired; the general overhauling of the steamer *Bolívar* has been completed; the three new launches, mentioned elsewhere, are now being set up. In addition, the repairs of the transports on the piers and repairs of foreign steamships were made at the new La Boca shops.

In Colon the ship berths at Pier No. 1 required dredging, to accommodate deeper laden coal ships. To effect this the plant was increased by the purchase of a new "Hayward orange-peel bucket," which will also be useful in the future.

Important improvements have been undertaken and partly completed upon Pier No. 2 at Colon, whereby an additional berth for the convenient handling of coal ships has been gained, and the long-distance trucking heretofore necessary there will be avoided, three tracks connecting with the main line having been laid down the whole length of the wharf.

An annex for the reception of any case of contagious disease has been added to the hospital at Colon.

The officers and employees have been devoted to the interests of the company. Upon the Isthmus they have had to encounter the dangers incident to a state of war, and have exhibited courage as well as good judgment in their dealings with the contending factions.

Respectfully,

CHARLES PAINE, *General Manager.*

TABLE A.—Balance sheet, December 31, 1901.

Cost of road, real estate, and equipment.....	}	\$11,941,186.66
New terminal at La Boca.....		

RESOURCES.

Floating equipment:		
Steamers Alliance, Finance, and Advance, reduced value December 31, 1900.....	\$267,419.27	
Tugs and lighters, reduced value December 31, 1900.....	\$345,995.13	
Depreciation fund for tugs.....	2,100.00	
	343,895.13	611,314.40
Total.....		12,552,501.06
Bonds in treasury:		
206 6 per cent Panama Railroad Company sinking fund subsidy bonds.....	206,000.00	
897 4½ per cent twenty-year gold sinking fund bonds.....	898,037.50	1,104,037.50
On deposit with financial agents for redemption of bonds:		
6 per cent subsidy bonds.....		31,000.00
Advance of subsidy to Republic of Colombia.....		1,202,000.00
Improvement and construction accounts.....		129,598.14
Current assets:		
Cash in banks and with agents.....	434,420.22	
Coal and supplies on hand.....	158,548.55	
Due from connecting companies.....	112,229.01	
Due from United States Government.....	26,671.87	
Due from companies and individuals.....	116,716.36	
Accrued interest on deposits.....	4,771.04	
Accrued interest on securities owned.....	2,307.50	
Unadjusted accounts, including purchase of leasehold Pier 57, N. R., until 1911.....	67,829.42	
Prepaid insurance and charter of steamers.....	20,864.28	
		944,358.25
		15,963,494.95

LIABILITIES.

Capital stock.....		\$7,000,000.00
4½ per cent, twenty-year sinking fund gold bonds (authorized issue, \$4,000,000):		
Issued to date (2,962 bonds, less 420 bonds previously redeemed).....	\$2,542,000.00	
Drawn for redemption in 1901.....	141,000.00	
		2,401,000.00
Total capital stock and mortgage liabilities.....		9,401,000.00
Six per cent gold sinking fund subsidy bonds ^a		1,202,000.00
Due contractors, new terminal at La Boca ^b		929,812.15
Bonds drawn for redemption not presented for payment:		
6 per cent subsidy bonds.....		32,000.00
Accrued interest on bonds:		
4½ per cent twenty-year gold bonds (1,526 bonds).....	17,167.50	
6 per cent subsidy bonds.....	12,020.00	
		29,187.50
Funds for redemption of bonds:		
4½ per cent twenty-year gold bonds.....	62,248.11	
6 per cent subsidy bonds.....	72,915.00	
		135,163.11
Due Republic of Colombia:		
Department of Panama.....		21,875.00
Fund for replacement of boilers and special repairs to tugs.....		15,000.00
Current liabilities:		
Isthmus drafts not presented.....	26,987.43	
Coupons not presented.....	5,642.50	
Audited vouchers.....	62,157.99	
Unclaimed dividends.....	111.00	
Due deceased or missing employees.....	2,213.27	
		87,112.19
Balance to credit of profit and loss.....		4,110,345.00
Total.....		15,963,494.95

^a Of this amount \$871,000 will become due in 1905, and is secured by an equivalent amount of the company's new 4½ per cent bonds as collateral. The total may be reduced in the meantime at the option of the company by payments on account.

^b 1,202 6 per cent gold sinking fund subsidy bonds of \$1,000 each, amounting to \$1,202,000, issued November 1, 1880, fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company: First to the payment of the interest, and second, as a cumulative sinking fund for the redemption of the principal; the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

S. DEMING, Treasurer.

TABLE B.—*Profit and loss account, December 31, 1901.*

DEBIT.	
To one hundred and thirteenth dividend.....	\$140,000.00
Operating expenses.....	2,435,207.24
Appropriations for depreciation and special repairs of tugs.....	5,100.00
Fixed charges.....	496,811.61
Supplies of no value written off.....	775.45
Uncollectible accounts written off.....	18,438.78
Balance, assets over liabilities, December 31, 1901.....	4,110,345.00
	7,206,678.08
CREDIT.	
By balance, December 31, 1900.....	3,867,831.69
Gross earnings.....	3,196,708.97
4 1/2 per cent twenty-year sinking fund gold bonds, redeemed.....	141,000.00
Accounts of previous years settled.....	1,117.42
Total.....	7,206,678.08

TABLE No. 1.—*Comparative statement of operating expenses of railroad for the years ending December 31, 1900 and 1901.*

	1901.	1900.
General expenses on the Isthmus:		
Advertising.....	\$8.21	\$15.12
Cablegrams.....	415.33	174.45
Hospital service.....	7,576.73	7,997.57
Legal expenses.....	2,485.74	2,574.93
Salaries of officers.....	11,442.40	11,673.07
Salaries of clerks and attendants.....	12,516.09	12,725.58
Office expenses, stationery and printing.....	2,408.12	2,370.98
Other expenses.....	3,525.58	2,684.55
Total.....	40,378.20	40,216.25
Conducting transportation:		
Advertising.....	1,288.04	1,256.72
Clearing wrecks.....	138.00	72.46
Engineers and firemen.....	29,176.58	23,446.97
Fuel for locomotives.....	44,345.99	32,382.58
Injuries to persons.....	749.08	5,512.70
Labor, Colon and Panama stations.....	126,354.26	101,502.33
Oil, tallow, waste, and other supplies for locomotives.....	2,779.02	1,637.78
Roundhouse men.....	8,211.39	6,385.52
Superintendence and clerks.....	4,352.13	3,872.24
Switchmen, yardmen, and yard watchmen.....	33,257.21	27,988.17
Station agents and clerks.....	65,695.42	60,696.99
Station supplies and expenses.....	17,146.25	12,402.50
Stationery and printing.....	3,706.24	2,564.53
Train conductors, baggagemen, flagmen, and brakemen.....	18,295.34	14,371.82
Train supplies and expenses.....	3,310.25	2,717.57
Telegraph expenses.....	8,723.72	8,228.96
Water supply for locomotives.....	3,529.13	3,230.02
Other expenses.....	1,961.83	1,351.97
Total.....	373,022.88	309,516.83
Maintenance of equipment:		
Repairs of freight cars.....	60,266.15	51,307.00
Repairs of locomotives.....	24,216.16	30,966.38
Repairs of passenger cars.....	9,496.96	7,459.23
Repairs and renewals of shop machinery and tools.....	10,087.16	15,648.60
Superintendence and clerks.....	12,250.32	10,882.82
Stationery and printing.....	213.69	234.64
Total.....	116,519.83	116,518.87
Maintenance of way and structures:		
Repairs of bridges and culverts.....	12,493.24	23,852.66
Repairs and renewal of general offices.....	1,800.36	2,124.76
Repairs of road machinery and tools.....	2,317.79	2,208.68
Repairs of roadway and track.....	19,920.74	23,607.76
Renewals of switches and frogs.....	1,140.31	987.41
Renewals of spikes and rail fastenings.....	3,078.69	4,608.06
Repairs and renewal of station buildings.....	22,139.03	3,178.54
Repairs of shop buildings, water and fuel stations.....	14,028.64	5,200.99
Repair of section houses, tool houses, etc.....	666.22	231.11
Renewal of ties.....	2,971.13	13,758.36
Repairs of telegraph.....	2,423.26	1,691.23
Removal of weeds, brush, grass, etc.....	3,984.01	6,732.29
Superintendence and clerks.....	8,307.27	7,394.20
Stationery and printing.....	261.13	204.86
Other expenses.....	369.80	29.69
Total.....	95,841.62	95,810.60

TABLE No. 2.—Comparative statement of expenses of steamship line—Atlantic service—for years ending December 31, 1900 and 1901.

	1901.	1900.
Steamer expenses:		
Port charges.....	\$23,569.11	\$20,353.72
Custom-house entrance, clearance and consular fees, etc.....	1901. 1900.	
Pilotage.....	\$15,279.23 \$12,753.83	
Quarantine.....	7,351.88 6,620.89	
	938.00 979.00	
Docking.....	1,163.68	3,426.29
Equipment, deck, engine, and commissary departments.....	10,628.16	10,889.11
Fuel.....	111,450.11	89,512.67
Feeding passengers and crew.....	62,894.06	55,279.69
Insurance.....	22,760.53	22,728.10
Labor on cargo.....	121,278.24	121,072.38
Labor on coal.....	14,336.98	12,196.91
Labor on ashes.....	1,435.00	1,291.00
Loss and damage.....	6,038.14	3,184.06
Oil and waste.....	2,167.42	1,523.80
Painting ships' bottom.....	1,403.00	2,815.04
Repairs, deck, engine, and commissary departments.....	44,708.34	84,431.85
Stores, deck, engine, commissary, and surgeon's departments.....	12,462.84	12,752.55
Stationery and printing.....	875.98	430.46
Telegrams and cables.....	1,205.78	1,463.54
Towage.....	1,484.80	1,535.30
Wages.....	130,331.36	116,968.22
Water.....	12,578.43	11,453.58
Washing.....	1,772.11	1,227.37
Other expenses.....	1,333.38	1,856.37
Total.....	585,877.45	576,391.96
Agency expenses:		
Advertising.....	2,669.30	2,885.15
Insurance.....	1,759.21	1,307.86
Labor.....	16,645.71	17,874.27
Office expenses.....	5,962.49	7,126.75
Repairs and rent of offices and wharves.....	57,388.51	55,315.73
Salaries of agents and clerks.....	29,298.42	29,546.51
Stationery and printing.....	1,443.80	1,486.61
Taxes.....	1,000.03	960.00
Other expenses.....	1,035.34	686.79
Total.....	117,202.81	116,689.67

TABLE No. 3.—Comparative statement of general expenses, New York, for the years ending December 31, 1900 and 1901.

	1901.	1900.
General expenses, New York:		
Advertising.....	\$1,728.59	\$1,659.64
General office expenses.....	6,615.74	9,765.18
Legal services and expenses.....	9,149.82	8,246.80
Salaries of general officers and clerks and directors' and committees' fees.....	70,271.60	78,784.66
Stationery and printing.....	1,181.23	1,381.20
Telegrams and cablegrams.....	1,620.07	2,199.88
Other expenses.....	1,074.93	3,141.81
Total.....	91,641.98	100,178.62

[Extract from the fifty-third annual report of the Panama Railroad Company.]

NEW YORK, March 26, 1903.

To the stockholders of the Panama Railroad Company.

For the eighth time I respectfully present for your consideration the annual report of the board of directors.

I call your attention to the report of the general manager, with the accompanying statement of earnings and expenses for the calendar year 1902, and the treasurer's balance sheet and transcript of profit and loss account, which will furnish you

detailed information upon the physical and financial aspects of the company's properties and business.

Capital stock issue (unchanged).....	\$7, 000, 000. 00
The present outstanding bond issues, are—	
Sinking-fund 6 per cent subsidy bonds:	
Original issue of (being payment in advance of the annual subsidy of \$225,000 to the Republic of Colombia).....	\$3, 000, 000. 00
Redeemed by annual sinking-fund drawings, including \$153, 000 drawn in 1902.....	1, 951, 000. 00
Outstanding at this date.....	1, 049, 000. 00
Of those outstanding \$180, 000 are owned by the company and held in its treasury.....	180, 000. 00
Leaving in the hands of the public.....	869, 000. 00
By the operation of the sinking-fund provision of this issue, all of the bonds outstanding will be redeemed in 1908.	
First-mortgage 4½ per cent 20-year gold bonds.	
Authorized issue of.....	\$4, 000, 000. 00
Held by the public.....	\$2, 364, 000. 00
Redeemed by annual sinking-fund drawings, including \$140, 000 drawn in 1902.....	701, 000. 00
Held in the company's treasury.....	935, 000. 00
	4, 000, 000. 00

Through the operation of the sinking fund this indebtedness will be reduced by 1917, the date of maturity of the mortgage, to \$1, 199, 000. It is the only mortgage lien upon the company's property.

During 1902, in addition to the payment out of the year's gross earnings of the \$250, 000, annually due the Colombian Government, and the redemption, with interest, of \$140, 000 of the company's 4½ per cent first-mortgage bonds, \$124, 802.84 was expended out of accumulated earnings for carrying on new construction and improvements to the company's property ashore and afloat at the Isthmus, begun in 1901. That sum has been distributed partly to capital accounts and partly to operating expenses of the years 1902–1906, according to its character and as already authorized.

Out of net earnings of the year 1901, a dividend of 2 per cent was declared and paid to the stockholders in June last, and a like dividend of 2 per cent was declared and paid in September last, out of the current net earnings of 1902.

The port and terminal at La Boca, which was completed and opened to commerce on January 1, 1901, has fully justified the expectations of the management. The total cost of this great work was \$2, 161, 552.39, all of which has been paid, so that the company has no outstanding indebtedness in this regard.

The facilities of the pier at La Boca have been increased by the addition of four large electric transporters with auxiliary operating plant, as shown by the general manager's report herewith; required depths in the basins adjoining the pier and in the maritime channel approach to it have been maintained at large cost, but results obtained in operating the terminal have fully warranted the outlay.

The La Boca port and terminal, which connects by a branch road with the main line, is open to commerce, and ships of large capacity now load and discharge directly at this dock. In addition to the facilities of the La Boca port the business of the company has required the maintenance, also, of its terminal facilities in the city of Panama.

The company's operations on the Isthmus were seriously hampered by revolutionary disturbances, which continued there during the year and caused the company large expense for the gratuitous transportation of Government troops and material under its concessionary contract with the United States of Colombia. Numerous new taxes and imposts which restricted traffic were levied by that Government that were later in part discontinued.

The company's relations with the Colombian Government officials, both national and State, continue friendly, all differences that arose during war operations having been satisfactorily adjusted.

New contracts were entered into with the Pacific Mail Steamship Company to cover traffic on the Pacific coast north of Panama, and with the Pacific Steam Navigation Company and the Cia Sud Americana de Vapores to cover traffic on that coast south of Panama, which resulted in the discontinuance in June, 1902, of this company's steamship service on the Pacific between Panama and San Francisco, that had not proved as remunerative as desired; under the new contract with the Pacific Mail

Steamship Company weekly departures from Panama and San Francisco have been inaugurated.

The company's traffic connections on the Atlantic side with the Hamburg-American Line, Compagnie Generale Transatlantique, Royal Mail Steam Packet Company, Leyland Line (West India and Pacific branch), Harrison Line and Compañia Transatlantica de Barcelona, which connect the Isthmus with the leading ports of Europe, continue satisfactorily, as they have done without interruption for more than a quarter of a century.

The company's steamship line from New York, which connects with the railroad at Colon, continues a remunerative branch of the service.

The result of the company's operations was materially affected by a constant advance in cost of fuel, materials, and labor.

The condition of the company's property has been fully maintained and many improvements added, for the interesting account of which I refer you to the general manager's report.

I again refer you to the other accompanying reports for more detailed particulars. Respectfully submitted.)

J. EDWARD SIMMONS, *President*.

PANAMA RAILROAD COMPANY,
New York, March 18, 1903.

To the President of the Panama Railroad Company.

SIR: I respectfully submit the following report of the business and operations of the Panama Railroad Company for the year ending December 31, 1902, and of the condition of the company's property.

The operations of the year show the following results:

Statement of earnings and expenditures.

	1902.	1901.	Increase.	Decrease.
EARNINGS.				
Railroad:				
Colon to Panama—				
Freight	\$559,392.30	\$606,185.65		\$46,793.35
Treasure	7,223.08	4,182.77	\$3,040.31	
Mails	49,402.46	52,254.08		2,851.62
Extra baggage	8,816.26	9,685.40		879.14
Passengers	31,735.21	39,236.81		7,501.60
	656,569.31	711,564.71		54,995.40
Panama to Colon—				
Freight	522,667.88	590,624.07		67,956.19
Treasure	16,035.16	14,384.07	1,701.09	
Mails	4,818.45	4,780.47	37.98	
Extra baggage	7,142.36	7,460.37		318.02
Passengers	32,112.16	36,417.87		4,306.71
	582,776.00	653,616.85		70,840.85
Total earnings of railroad	1,239,345.31	1,365,171.56		125,826.25
Panama railroad steamship line—				
Atlantic service—				
Freight	652,966.87	718,607.88		65,641.01
Treasure	5,556.51	4,951.65	604.86	
Mails	83,013.99	79,015.83	3,998.16	
Extra baggage	1,945.07	2,186.69		241.62
Passengers	150,824.81	154,571.58		3,746.77
Miscellaneous	4,008.88	7,517.21		3,508.33
	898,316.13	966,850.84		68,534.71
Pacific service—				
Freight	161,051.32	349,277.33		188,226.01
Passengers	6,029.00	16,425.25		10,396.25
Extra baggage	37.91	120.18		82.27
	167,118.23	365,822.76		198,704.53
Joint railroad and steamship receipts	458,035.96	498,863.81		40,827.85
Total earnings	2,702,815.63	3,196,708.97		433,893.34

Statement of earnings and expenditures—Continued.

	1902.	1901.	Increase.	Decrease.
EXPENDITURES.				
Operating expenses of railroad:				
General expenses on Isthmus.....	\$42,838.36	\$40,378.20	\$2,460.16	
Conducting transportation.....	342,321.45	373,022.88		\$30,701.43
Maintenance of equipment.....	118,090.25	116,519.83	1,560.42	
Maintenance of way and structures.....	91,469.93	95,341.62		3,871.69
	594,709.99	625,262.53		30,552.54
Panama Railroad Steamship Line:				
Atlantic service—				
Steamer expenses.....	552,276.86	585,877.45		33,600.59
Agency expenses.....	117,137.92	117,202.81		64.89
Charter of steamers.....	120,570.19	164,929.38		44,359.19
	789,984.97	868,009.64		78,024.67
Pacific service—				
Steamer expenses.....	91,444.98	216,580.21		125,135.28
Agency expenses.....	54,019.67	111,798.99		57,779.22
Charter of steamers.....	106,862.50	279,659.33		172,796.83
	252,327.10	608,038.43		355,711.38
Joint railroad and steamship expenses.....	319,098.71	333,896.64		14,802.93
Total operating expenses.....	1,956,115.77	2,435,207.24		479,091.47
Earnings over operating expenses.....	806,699.86	761,501.73	45,198.13	
Appropriations for depreciation and special repairs of tugs:				
Depreciation of tugs.....	2,100.00	2,100.00		
Replacement of boilers and special repairs of tugs.....	3,900.00	3,000.00	900.00	
	6,000.00	5,100.00	900.00	
Fixed charges:				
Subsidy to the Republic of Colombia.....	25,000.00	25,000.00		
Redemption of subsidy bonds.....	152,890.00	144,240.00	8,640.00	
Interest on subsidy bonds.....	72,120.00	80,760.00		8,640.00
Interest on first mortgage bonds.....	99,882.50	70,200.00	29,682.50	
Redemption of first mortgage bonds.....	150,000.00	150,000.00		
Interest on balance due La Boca wharf contractors.....	5,432.96	26,611.61		21,178.65
	505,315.46	496,811.61	8,503.85	
Total appropriations and fixed charges.....	611,315.46	501,911.61	9,403.85	
Net income.....	295,384.40	259,590.12	35,794.28	

a Includes wharfage at La Boca.

Gross revenue receipts, expenditures, and net earnings for 1902, compare, as under, with those of 1901:

	Earnings.	Operating expenses.	Earnings over operating expenses.	Appropriations for depreciations, etc.	Net earnings.
1902.....	\$2,762,815.63	\$1,956,115.77	\$806,699.86	\$6,000.00	\$800,699.86
1901.....	3,196,708.97	2,435,207.24	761,501.73	5,100.00	756,401.73
Increase in 1902.....			45,198.13	900.00	44,298.13
Decrease in 1902.....	433,893.34	479,091.47			
Increase in fixed charges, 1902.....					8,503.85
Increase in profit, 1902.....					35,794.28

EARNINGS.

RAILROAD.

The total earnings of the railroad proper, for 1902, show a decrease of \$125,826.25, or 9.22 per cent, as compared with the earnings for 1901. There was a falling off in all kinds of traffic excepting treasure, which shows an increase of \$4,741.40, or 25.61 per cent.

Freight traffic, eastbound, decreased almost 18,000 tons from South Pacific ports, and over 11,000 tons from San Francisco, while the decrease in westbound freight to San Francisco was 11,000 tons, and to South Pacific ports 6,000 tons.

Traffic to and from Panama, Central America, and Mexico increased slightly over last year.

The following table shows the freight tonnage carried over the railroad in 1902, as compared with 1901:

[Ton of 2,000 pounds. or 40 cubic feet.]

	Year ending Decem- ber 31, 1902.	Year ending Decem- ber 31, 1901.	Increase.	Decrease.
			<i>Per cent.</i>	<i>Per cent.</i>
Westbound	180,267	185,743		7.91
Eastbound	166,422	189,841		12.34
Total	346,689	385,584		10.09

The gross earnings per ton moved on the road compare as follows:

	Year ending Decem- ber 31, 1902.	Year ending Decem- ber 31, 1901.	Increase.	Decrease.
			<i>Per cent.</i>	<i>Per cent.</i>
Westbound	\$3.11	\$3.10	0.32	
Eastbound	3.14	3.11	.96	
Average	3.13	3.10	.97	

Table No. 5, accompanying this report, shows the origin and destination of the freight carried over the railroad.

Compared with 1901, the total tonnage transported over the railroad in 1902 shows a decrease of 38,895 tons, or 10.09 per cent, and the earnings a decrease of \$114,749.54, or 9.59 per cent.

Of the total tonnage carried, 52 per cent was westbound and 48 per cent eastbound. In 1901 these percentages were 50.77 per cent and 49.23 per cent, respectively.

The proportion of through traffic to the total tonnage handled was 78.61 per cent; in 1901 through freight amounted to 81.70 per cent.

Coal comprised 60.21 per cent of the local traffic westbound.

The following statements show the number of passengers carried and the passenger earnings:

Classification.	Number of passengers carried.			Passenger earnings.		
	1902.	1901.	Decrease.	1902.	1901.	Decrease.
First-class	3,862	4,587	<i>Per cent.</i> 15.81	\$25,631.78	\$28,507.47	<i>Per cent.</i> 10.09
Second-class	76,946	84,574	9.02	38,215.59	47,147.21	18.94
Total	80,808	89,161	9.37	63,847.37	75,654.68	15.61

Average receipts per passenger.

Classification.	1902.	1901.	Increase.	Decrease
			<i>Per cent.</i>	<i>Per cent.</i>
First-class:				
Through	\$8.97	\$8.98	.....	0.11
Local	3.58	3.73	.....	4.02
Second-class:				
Through	3.96	3.77	5.04	.....
Local .....	.42	.47	.....	10.64

The total passenger earnings are \$63,847.37, or 15.61 per cent less than in 1901. First-class passengers decreased 725, or 15.81 per cent, in number and \$2,875.69, or 10.09 per cent, in earnings. Second-class passengers decreased 7,628, or 9.02 per cent, in number and \$8,931.62, or 18.94 per cent, in earnings.

STEAMSHIP LINES.

The total earnings of the Atlantic Line from all sources amounted to \$898,316.13, a decrease of \$68,534.71, or 7.09 per cent, the loss being almost entirely due to the large falling off in tonnage to and from South Pacific ports and San Francisco.

Of the total tonnage transported, 104,062 tons were carried by the Company's steamers and 54,340 tons by chartered steamers.

The Pacific Line was in operation only about six months, the last steamer sailing from San Francisco on June 12, and from Panama, July 5, which accounts for the large decrease in its earnings of \$198,704.53, or 54.32 per cent.

JOINT RAILROAD AND STEAMSHIP RECEIPTS.

The net result of all the accounts grouped together under this heading shows a decrease in earnings of \$40,827.85, or 8.18 per cent.

The following table will show the number of tons lightered in Panama Bay and handled on La Boca wharf during the year 1902 as compared with 1901:

	1902.	1901.	Decrease.
	<i>Tons.</i>	<i>Tons.</i>	<i>Per cent.</i>
Merchandise	209,086	216,144	3.27
Lumber	38	409	90.71
Coal	20,960	22,286	5.86
	230,104	238,839	3.66

EXPENDITURES.

The revenue expenditures of 1902 and 1901 compare as under:

	1902.	1901.	Increase.	Decrease.
Railroad	\$594,709.99	\$625,262.53	.....	\$30,552.54
Steamship line:				
Atlantic service	789,984.97	868,009.64	.....	78,024.67
Pacific service	252,327.10	608,088.43	.....	356,711.33
Joint railroad and steamship expenses	319,093.71	333,896.64	.....	14,802.93
Appropriations for depreciation and special repairs to tugs	6,000.00	5,100.00	\$900.00	.....
Total	1,962,115.77	2,440,307.24	.....	478,191.47

This table shows a decrease of \$478,191.47 in total revenue expenditures, while there was a decrease of \$433,893.34 in total earnings.

RAILROAD.

CONDUCTING TRANSPORTATION.

The expenses of this department show a decrease of \$30,701.43, or 8.23 per cent, as compared with 1901. The tonnage moved decreased 38,895 tons, or 10.09 per cent.

An important expense was incurred by the free transportation of marines and sailors of the United States engaged in maintaining the security of the transit upon the Isthmus.

From February 1 to December 31, 1902, there were also transported without charge 56,384 soldiers for the Colombian Government, and during the year 15,525 Government officials and employees on passes.

MAINTENANCE OF EQUIPMENT.

The total charge under this heading amounted to \$118,080.25 during the year, an increase of \$1,560.42, or 1.34 per cent, as compared with 1901.

The running repairs upon the whole of the equipment have been promptly executed as required; in addition, 4 switch engines received thorough overhauling, engine No. 9 having a new boiler.

Four road engines which had been out of service for many years were repaired thoroughly and put into use.

Eleven cars in the passenger service underwent general repairs.

Forty-one box cars, 31 coal cars, and 65 flat cars received general repairs, and 19 coal cars had the sides raised to increase their capacity. New cars were built to replace all the missing numbers referred to in the annual report for 1900.

MAINTENANCE OF WAY AND STRUCTURES.

The track bridges and buildings have been well maintained, the expenditures being \$91,469.93, a decrease of \$3,871.69, or 4.06 per cent.

Two hundred tons of new steel rails of 70 pounds per yard have been laid in the main track; such of the rails removed as were suitable have been used to extend the sidings in Colon and Panama yards.

Repairs of masonry include a new facing, upon a pile foundation, of the south abutment of bridge No. 48; an apron at bridge No. 42, of 4,000 square feet area; two pipe culverts replacing destroyed stone culverts, and many small improvements at other bridges.

The track between Panama and Pedro Miguel, which is used as a highway for pack animals, has been strengthened by widening the roadbed with stone where it had been trampled away—over a distance of about seven miles.

One thousand five hundred feet of drain tiles have been laid in cuttings.

Important repairs to the docks at Colon were found necessary, and have been completed in a substantial manner; the changes upon pier No. 2, begun last year, were finished.

The beach road at Colon, in front of the company's dwellings and shops, has been protected with stone.

In order to facilitate the handling of large quantities of coal, the lagoon adjacent to the piers No. 1 and No. 2 at Colon has been filled, ready for use as coal-storage yard.

The water station at Pedro Miguel has been improved by the erection of a 20,000-gallon tank, with suitable arrangements for a rapid supply to the water cars, by which Panama and La Boca are furnished during the dry season.

STEAMSHIP LINES.

The operating expenses of the line between New York and Colon were \$789,984.97, a decrease \$78,024.67, or 8.99 per cent, as compared with the previous year. Owing to the large decrease in tonnage from San Francisco and South Pacific ports, only three extra cargo ships were required to handle the freight moving to New York, which accounts for the decrease of \$44,359.19 in charter of steamers. In 1901 there were two round trips and seven trips, Colon to New York, of extra cargo ships.

On October 24, 1902, the steamship *Adrance* was laid off for repairs, her place being filled by a chartered vessel.

Although the Pacific line was discontinued in July, the expenses of the San Francisco agency have been continued as a charge to that line until the end of the year, while the charges to steamer expenses after July, as shown in Table No. 13, are principally for loss and damage to freight.

JOINT RAILROAD AND STEAMSHIP EXPENSES.

The combined expenditures under this head, which include general expenses, foreign-agency expenses, lighterage, docks and wharves, real estate, etc., amounted to \$319,093.71, a decrease of \$14,802.93, or 4.43 per cent.

Four of the oldest launches have been condemned; the three new ones purchased last year have been completed and are in use.

GENERAL REMARKS.

During the period from 1894 to 1902, inclusive, the percentage of total expenses to gross earnings was as follows:

	Per cent.
1894	69.93
1895	61.63
1896	53.94
1897 (including taxes and appropriations for depreciation, etc.)	61.12
1898 (including taxes and appropriations for depreciation, etc.)	64.91
1899 (including taxes and appropriations for depreciation, etc.)	64.66
1900 (including taxes and appropriations for depreciation, etc.)	65.25
1901 { (including taxes and appropriations for depreciation, etc.)	64.72
{ (or including Pacific line not operated in 1900)	76.34
1902 { (including taxes and appropriations for depreciation, etc.)	65.87
{ (or including Pacific line operated for six months)	71.02

At the request of the Government this company assumed the lighting of the city of Colon for the Colon Illuminating Company, receiving due compensation. The electric-light plant and the ice plant, which are operated together, have become self-sustaining and contribute much to the comfort and health of the company's employees. The general illumination has added to the security of the property.

Dredging of the La Boca basin and in the maritime channel has been continuous; the use of the new wharf has been constant and without interruption, to the great benefit of the cargoes exchanged.

Four electrical cranes and an electric plant for operating them are in course of erection, to supplement the steam cranes on the La Boca pier, at which the tonnage handled increased by 56 per cent over last year; practically superseding the use of lighters, except for coal and storage.

The land department has continued to increase its revenue, notwithstanding the continuance of political disturbances and the temporary suspension of the administration of justice.

Telephone instruments have been provided for the trains, enabling the conductors to have communication with the terminal officers at any point on the railway.

The officers and employees have served the company faithfully. Upon the Isthmus they have again had to deal with contending factions; by their courageous and judicious conduct they maintained the transit without serious interruption and contributed in no small measure to the reestablishment of peace.

Respectfully,

CHARLES PAINE, *General Manager.*

TABLE A.—*Balance sheet, December 31, 1902.*

RESOURCES.	
Cost of road, real estate, and equipment	\$11,986,452.88
New terminal at La Boca	
Floating equipment—	
Steamers <i>Allianza, Finance,</i> and <i>Adrance</i> , reduced value December 31, 1901	\$267,419.27
Tugs and lighters, reduced value December 31, 1901	\$343,896.13
Cost of 3 new coal lighters	36,342.40
	380,237.53
Depreciation fund for tugs and cost of 4 lighters condemned and out of service	62,100.00
	318,137.53
	585,556.80
Total	12,572,009.68
Bonds in treasury:	
180 6 per cent Panama Railroad Company sinking-fund subsidy bonds	180,000.00
935 4½ per cent twenty-year gold sinking-fund bonds	936,037.50
	1,116,037.50

On deposit with financial agents for redemption of bonds:		
6 per cent subsidy bonds.....		32,000.00
Advance of subsidy to Republic of Colombia.....		1,049,000.00
Improvement and construction accounts.....		114,456.98
Fund for replacement of boilers and special repairs to tugs.....		22,544.88
Current assets:		
Cash in banks and with agents.....	471,525.50	
Coal and supplies on hand.....	187,682.74	
Due from connecting companies.....	123,949.27	
Due from United States Government.....	21,025.15	
Due from Republic of Colombia.....	21,367.21	
Due from companies and individuals.....	55,279.96	
Accrued interest on deposits.....	6,677.06	
Accrued interest on securities owned.....	2,047.50	
Unadjusted accounts, including purchase of leasehold pier 57, N. R., until 1911.....	79,515.71	
Prepaid insurance and charter of steamers.....	19,506.27	
		<u>968,576.36</u>
		15,894,625.40
LIABILITIES.		
Capital stock.....		\$7,000,000.00
4½ per cent twenty-year sinking fund gold bonds (authorized issue, \$4,000,000):		
Issued to date (1,000 bonds, less 561 bonds previously redeemed).....	\$3,439,000.00	
Drawn for redemption in 1902.....	140,000.00	
		<u>3,299,000.00</u>
Total capital stock and mortgage liabilities.....		10,299,000.00
6 per cent gold sinking fund subsidy bonds ^a		1,049,000.00
Bonds drawn for redemption not presented for payment:		
6 per cent subsidy bonds.....		32,000.00
Accrued interest on bonds:		
4½ per cent twenty-year gold bonds (2,386 bonds).....	\$26,842.50	
6 per cent subsidy bonds.....	10,490.00	
		<u>37,332.50</u>
Funds for redemption of bonds:		
4½ per cent twenty-year gold bonds.....	68,300.85	
6 per cent subsidy bonds.....	74,325.00	
		<u>137,625.85</u>
Due Republic of Colombia:		
Department of Panama.....		21,875.00
Allowance to cover excess interest over contract rate on 4½ per cent bonds sold to prepay indebtedness due contractors new terminal at La Boca on October 15, 1905.....		39,386.44
Current liabilities:		
Isthmus drafts not presented.....	\$13,591.11	
Coupons not presented.....	7,247.50	
Audited vouchers.....	58,682.21	
Unclaimed dividends.....	117.00	
Due deceased or missing employees.....	2,230.70	
		<u>76,818.52</u>
Balance to credit of profit and loss.....		4,201,587.09
		<u>15,894,625.40</u>
		S. DEMING, Treasurer.

TABLE B.—Profit and loss account, December 31, 1902.

DEBIT.		
To one hundred and fourteenth dividend.....		\$140,000.00
One hundred and fifteenth dividend.....		140,000.00
Operating expenses.....		1,956,115.77
Appropriations for depreciation and special repairs of tugs.....		6,000.00
Fixed charges.....		505,515.46
Cost of 4 lighters condemned and out of service.....		60,000.00
Adjustment of accounts of previous years.....		5,599.48
Uncollectible accounts, etc., written off.....		120.17
Balance, assets over liabilities, December 31, 1902.....		4,201,587.09
		<u>7,014,737.97</u>
CREDIT.		
By balance, December 31, 1901.....		4,110,345.00
Gross earnings.....		2,762,815.63
4½ per cent twenty-year sinking fund gold bonds, redeemed.....		140,000.00
Accounts of previous years settled.....		1,577.34
		<u>7,014,737.97</u>

^a1,049 six per cent gold sinking-fund subsidy bonds of \$1,000 each, amounting to \$1,049,000, issued November 1, 1880, fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1908, the same to be applied by the company: First, to the payment of the interest, and second, as a cumulative sinking fund for the redemption of the principal, the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1 after each drawing, and thereby redeeming the whole issue in 1908.

302 INVESTIGATION OF PANAMA RAILWAY COMPANY.

TABLE No. 1.—*Comparative statement of operating expenses of railroad for the years ending December 31, 1901 and 1902.*

	1902.	1901.
General expenses on the Isthmus:		
Advertising.....	\$7.58	\$8.21
Cablegrams.....	380.36	416.88
Hospital service.....	8,505.96	7,576.73
Legal expenses.....	3,454.46	2,485.74
Salaries of officers.....	11,094.88	11,442.40
Salaries of clerks and attendants.....	12,686.90	12,516.09
Office expenses, stationery and printing.....	2,348.92	2,408.12
Other expenses.....	4,409.81	8,525.58
Total.....	42,838.86	40,378.20
Conducting transportation:		
Advertising.....	1,269.98	1,288.04
Clearing wrecks.....	343.02	198.00
Engineers and firemen.....	29,784.11	29,178.58
Fuel for locomotives.....	39,709.77	44,845.99
Injuries to persons.....	461.82	749.08
Labor—Colon and Panama stations.....	108,914.03	126,354.26
Oil, tallow, waste, and other supplies for locomotives.....	2,195.09	2,779.02
Roundhouse men.....	7,562.38	8,211.39
Superintendence and clerks.....	4,330.15	4,352.13
Switchmen, yardmen, and yard watchmen.....	40,922.78	33,257.21
Station agents and clerks.....	61,927.39	66,695.42
Station supplies and expenses.....	10,577.61	17,146.25
Stationery and printing.....	3,235.90	3,706.24
Train conductors, baggagemen, flagmen, and brakemen.....	17,848.07	18,295.84
Train supplies and expenses.....	3,636.06	3,810.25
Telegraph expenses.....	8,788.82	8,726.72
Water supply for locomotives.....	3,658.18	3,529.13
Other expenses.....	2,256.77	1,961.88
Total.....	842,321.45	873,022.88
Maintenance of equipment:		
Repairs of freight cars.....	45,514.92	60,266.15
Repairs of locomotives.....	89,490.18	24,216.16
Repairs of passenger cars.....	12,675.08	9,496.96
Repairs and renewals of shop machinery and tools.....	8,741.48	10,097.15
Superintendence and clerks.....	11,606.86	12,230.32
Stationery and printing.....	252.78	218.09
Total.....	118,080.25	116,519.83
Maintenance of way and structures:		
Repairs of bridges and culverts.....	9,702.97	12,493.24
Repairs and renewal of general offices.....	471.91	1,900.36
Repairs of road machinery and tools.....	2,205.87	2,317.79
Repairs of roadway and track.....	35,806.67	19,920.74
Renewals of switches and frogs.....	57.02	1,140.31
Renewals of spikes and rail fastenings.....	1,086.39	3,078.69
Repairs and renewal of station buildings.....	9,482.14	22,189.03
Repairs of shop buildings, water and fuel stations.....	10,900.49	14,028.64
Repairs of section houses, tool houses, etc.....	222.56	666.22
Renewal of ties.....	5,931.90	2,971.13
Repairs of telegraph.....	2,964.53	2,423.26
Removal of weeds, brush, grass, etc.....	3,667.69	3,934.01
Superintendence and clerks.....	8,847.02	8,307.27
Stationery and printing.....	253.92	261.13
Other expenses.....	419.85	369.80
Total.....	91,469.93	95,341.62

[Extracts from the fifty-fourth annual report of the Panama Railroad Company.]

NEW YORK, March 24, 1904.

To the stockholders of the Panama Railroad Company:

I respectfully present for your consideration the annual report of the board of directors for the calendar year 1903.

I call your attention to the report of the general manager, with the accompanying statement of earnings and expenses for the calendar year 1903, and the treasurer's balance sheet and transcript of profit and loss account, which will furnish you detailed information upon the physical and financial aspects of the company's properties and business.

Capital stock issue (unchanged), \$7,000,000.

The present outstanding bond issues are:

Sinking fund 6 per cent subsidy bonds:

Original issue of.....	\$3, 000, 000
(Being payment in advance of the annual subsidy of \$225,000 to the Republic of Colombia.)	
Redeemed by annual sinking fund drawings, including \$162,000 drawn in 1903.....	2, 113, 000
Outstanding at this date.....	887, 000
Of those outstanding \$153,000 are owned by the company and held in its treasury	153, 000
Leaving in the hands of the public.....	734, 000

By the operation of the sinking fund provision of this issue all of the bonds outstanding will be redeemed in 1908.

First mortgage 4½ per cent twenty-year gold bonds:

Authorized issue of.....	\$4, 000, 000
Held by the public	\$2, 224, 000
Redeemed by annual sinking fund drawings, including \$140,000 drawn in 1903.....	841, 000
Held in the company's treasury	935, 000
	4, 000, 000

Through the operation of the sinking fund this indebtedness will be reduced by 1917, the date of maturity of the mortgage, to \$1,199,000. It is the only mortgage lien upon the company's property.

During 1903, in addition to the payment out of the year's gross earnings of the \$250,000 annually due the Colombian Government, and the redemption, with interest, of \$140,000 of the company's 4½ per cent first mortgage bonds, outlay has been limited to maintaining the company's property in an effective condition, and completing improvements begun in previous years.

Construction account has been increased only by the cost of the four new electric transporters installed at La Boca, while operating expenses have been charged with the year's (1903) proportion of betterments, completed in 1902.

Dividends aggregating 8 per cent were declared out of accumulated earnings and paid 2 per cent on April 3, 2 per cent on October 1, and 4 per cent on January 1 last.

The company's efforts for many years to recover a considerable sum of taxes improperly paid to the State of New York were successful this year, and a substantial amount was covered into the company's treasury.

The important outlay required each year to maintain depths in the basins alongside the La Boca pier may be regarded as a "fixed charge" for the railroad until the Panama Canal is opened to commerce. The total cost for 1903 was less than for 1902.

The operation of the company's steamship line has resulted favorably, despite the necessity for its maintenance chiefly with chartered ships, owing to the laying up for repairs of *S. S. Advance* and *Finance*, which are now in progress.

The company's connection, at Colon, with six important European steamship lines has been continued satisfactorily, and increased by a resumption of relations with *Veloce* Company of Genoa, Italy, and addition of the Austrian-American Line, thereby extending our service to ports on the Adriatic coast.

Regular steamship connection has been established between Colon and New Orleans by arrangement with the United Fruit Company of Boston.

Operations under the new contract with Pacific Mail Steamship Company to cover traffic on the Pacific coast north of Panama continues satisfactorily, although extreme quarantine regulations and destruction of terminal facilities at various Mexican and Central American ports were injurious; better results are expected this season.

Reports are received from time to time regarding the expected early completion of projected transcontinental lines to compete with this company's railroad, but no such competition is actively in operation yet.

Operations under the new agreements with Pacific Steam Navigation Company and *Cia Sud Americana de Vapores* were seriously hampered by the closing of several ports to commerce on the Pacific coast south of Panama, because of an outbreak of bubonic plague.

An important decrease in exports from that territory resulted, with consequent loss of revenue to the joint carriers. Importation, however, was maintained, and on an increased scale.

The average cost to the company of labor and supplies was higher than for previous years.

Early in November, 1903, the Department of Panama seceded from the Republic of Colombia and successfully established the Republic of Panama, which new State has formally been recognized by nearly all of the leading nations of the globe. As a result the Republic of Colombia was deprived of its sovereignty over the territory in which the company's railroad and property are located, and the Republic of Panama has taken the place of the Republic of Colombia in the contract of concession with this company. In view of the change which had thus occurred, and to show its intention of loyally fulfilling its duties, the Republic of Panama at once, through its duly qualified commissioners (then in this city), gave formal notice to this company that the Republic assumed for itself all of the obligations of that contract toward this company, which action was later ratified by their Government, and formally concurred in by the Panama Railroad Company.

The condition of the company's property has been fully maintained and some improvements added, for the interesting account of which I refer you to the general manager's report.

I again refer you to the other accompanying reports for more detailed particulars. Respectfully submitted.

J. EDWARD SIMMONS, *President.*

PANAMA RAILROAD COMPANY,
New York, March 13, 1904.

To the President of the Panama Railroad Company.

SIR: I respectfully submit the following report of the business and operations of the Panama Railroad Company for the year ending December 31, 1903, and of the condition of the company's property.

The operations of the year show the following results:

Statement of earnings and expenditures.

	1903.	1902.	Increase.	Decrease.
EARNINGS.				
Railroad:				
Colon to Panama—				
Freight	\$607,614.99	\$559,392.30	\$48,222.69	
Treasure	7,900.98	7,223.08	677.90	
Mails	50,296.41	49,402.46	893.95	
Extra baggage	8,496.64	8,816.26		\$320.62
Passengers	32,759.08	31,735.21	1,023.87	
	707,067.10	666,569.31	50,497.79	
Panama to Colon—				
Freight	500,010.29	522,667.88		22,657.59
Treasure	15,187.63	16,035.16		897.53
Mails	5,178.90	4,818.45	360.45	
Extra baggage	7,514.43	7,142.35	372.08	
Passengers	32,662.56	32,112.16	550.40	
	560,503.81	582,776.00		22,272.19
Total earnings of railroad	1,267,570.91	1,239,345.31	28,225.60	
Panama Railroad Steamship Line:				
Atlantic service—				
Freight	674,440.02	652,966.87	21,473.15	
Treasure	5,119.86	5,556.51		436.65
Mails	81,015.34	83,013.99		1,998.65
Extra baggage	1,905.90	1,945.07		39.17
Passengers	154,238.89	150,824.81	3,414.08	
Miscellaneous	3,859.90	4,008.88		148.98
	920,579.91	898,316.13	22,263.78	
Pacific service—				
Freight	164.98	161,051.32		161,216.30
Passengers		6,029.00		6,029.00
Extra baggage		37.91		37.91
	164.98	167,118.23		167,283.21
Joint railroad and steamship receipts	476,065.45	458,035.96	18,029.49	
Total earnings	2,664,051.29	2,762,815.63		98,764.34

α Debit.

Statement of earnings and expenditures—Continued.

	1903.	1902.	Increase.	Decrease.
EXPENDITURES.				
Operating expenses of railroad:				
General expenses on Isthmus.....	\$41,356.41	\$42,838.36		\$1,481.95
Conducting transportation.....	338,303.93	342,321.45		4,017.52
Maintenance of equipment.....	113,765.69	118,080.25		4,314.56
Maintenance of way and structures.....	68,814.16	91,469.93		22,655.77
	562,240.19	594,709.99		32,469.80
Panama Railroad Steamship Line:				
Atlantic service—				
Steamer expenses.....	519,298.10	552,276.86		32,978.76
Agency expenses.....	105,204.52	117,137.92		11,933.40
Charter of steamers.....	234,104.17	120,570.19	\$113,533.98	
Expenses steamer Advance, out of commission.....	3,676.07		3,676.07	
Expenses steamer Finance, out of commission.....	3,220.92		3,220.92	
	865,503.78	789,984.97	75,518.81	
Pacific service—				
Steamer expenses.....	1,601.46	91,444.93		89,843.47
Agency expenses.....		54,019.67		54,019.67
Charter of steamers.....		106,862.50		106,862.50
	1,601.46	252,327.10		250,725.64
Joint railroad and steamship expenses.....	317,342.56	319,093.71		1,751.15
Total operating expenses.....	1,746,687.99	1,956,115.77		209,427.78
Earnings over operating expenses.....	917,363.30	806,699.86	110,663.44	
Appropriations for depreciation and special repairs of steamers and tugs:				
Replacement of boilers and special repairs of steamers.....	6,750.00		6,750.00	
Depreciation of tugs.....	2,100.00	2,100.00		
Replacement of boilers and special repairs of tugs.....	4,800.00	3,900.00	900.00	
	13,650.00	6,000.00	7,650.00	
Fixed charges:				
Subsidy to Republic of Colombia ^b	25,000.00	25,000.00		
Redemption of subsidy bonds.....	162,060.00	152,880.00	9,180.00	
Interest on subsidy bonds.....	62,940.00	72,120.00		9,180.00
Interest on first mortgage bonds.....	102,645.00	99,882.50	2,762.50	
Redemption of first mortgage bonds.....	150,000.00	150,000.00		
Interest on balance due La Boca wharf contractors.....		5,432.96		5,432.96
	502,645.00	505,315.46		2,670.46
Total appropriations and fixed charges....	516,295.00	511,315.46	4,979.54	
Net income.....	401,068.30	295,384.40	105,683.90	

^a Includes wharfage at La Boca.^b Republic of Panama after November 3, 1903.

Gross revenue receipts, expenditures, and net earnings for 1903, compare, as under, with those of 1902.

	Earnings.	Operating expenses.	Earnings over operating expenses.	Appropriations for depreciations, etc.	Net earnings.
1903.....	\$2,664,051.29	\$1,746,687.09	\$917,363.30	\$13,650.00	\$903,713.30
1902.....	2,762,815.63	1,956,115.77	806,699.86	6,000.00	800,699.86
Increase in 1903.....			110,663.44	7,650.00	103,013.44
Decrease in 1903.....	98,764.34	209,427.78			
Decrease in fixed charges, 1903.....					2,670.46
Increase in profit, 1903.....					105,683.90

EARNINGS.

RAILROAD.

The total earnings of the railroad proper show an increase of \$28,225.60, or 2.28 per cent, over the earnings of last year. West-bound freight earnings increased \$48,222.69, while east-bound earnings decreased \$22,657.59, thus making a net increase in freight earnings of \$25,565.10. Passenger earnings increased \$1,574.27 and mail earnings \$1,254.40.

Freight traffic destined to South Pacific ports increased 4,000 tons from New York and 7,000 tons from Europe, while there was a decrease in traffic from ports south of Panama to New York of 10,000 tons, and to Europe of 5,000 tons, as compared with last year—a total of 15,000 tons. In 1902 traffic from this territory was 18,000 tons less than in 1901. This continued falling off in tonnage from South Pacific ports is to be greatly deplored, and earnest efforts are being made to stop it.

Traffic to and from Central America and Mexico increased about 10 per cent over 1902.

The following table shows the freight tonnage carried over the railroad in 1903, as compared with 1902:

[Ton of 2,000 pounds, or 40 cubic feet.]

	Years ending December 31.			
	1903.	1902.	Increase.	Decrease.
West bound.....	187,796	180,267	Per cent. 4.18	Per cent.
East bound.....	161,742	166,422		2.81
Total.....	349,538	346,689	.82	

The gross earnings per ton moved on the road compare as follows:

	Year ending December 31—		Increase.	Decrease.
	1903.	1902.		
West bound.....	\$3.25	\$3.11	Per cent. 4.50	Per cent.
East bound.....	3.09	3.14		1.59
Average east and west bound.....	3.17	3.13	1.28	

Table No. 4, accompanying this report, shows the origin and destination of the freight carried over the railroad.

Compared with 1902 the total tonnage transported over the railroad in 1903 shows an increase of 2,849 tons, or 0.82 per cent, and the total earnings from freight an increase of \$25,565.10 or 2.36 per cent.

Of the total tonnage carried, 53.73 per cent was west bound and 46.27 per cent east bound. In 1902 these percentages were 52 per cent and 48 per cent, respectively.

The proportion of through traffic to the total tonnage handled was 80.61 per cent; in 1902 through freight amounted to 78.61 per cent.

Coal comprised 52.51 per cent of the local traffic west bound.

The following statements show the number of passengers carried and the passenger earnings:

Classification.	Number of passengers carried—		Increase.	Decrease.	Passenger earnings—		Increase.	Decrease.
	1903.	1902.			1903.	1902.		
First-class.....	4,636	3,862	Per cent. 20.04	Per cent.	\$28,114.04	\$25,631.78	Per cent. 9.68	Per cent.
Second-class.....	73,229	76,946		4.83	37,307.60	38,215.59		2.38
Total.....	77,865	808,08		3.64	65,421.64	63,847.37	2.47	

Average receipt per passenger.

Classification.	1903.	1902.	Increase.	Decrease.
First-class passengers:			<i>Per cent.</i>	<i>Per cent.</i>
Through	\$9.03	\$8.97	0.66	
Local	5.08	3.58		13.97
Second-class passengers:				
Through	4.87	3.96	22.98	
Local .....	.42	.42		

The total passenger earning amounted to \$65,421.64, an increase of \$1,574.27, or 2.47 per cent. First-class passengers increased 774, or 20.04 per cent, in number, and \$2,482.26 in earnings, or 9.68 per cent, while second-class passengers decreased 3,717, or 4.83 per cent, in number, and \$907.99, or 2.38 per cent, in earnings.

STEAMSHIP LINES.

The total earnings of the Atlantic line from all sources amounted to \$920,579.91, an increase of \$22,263.78, or 2.48 per cent. Of this increase \$21,473.15 was in freight traffic, the tonnage of which remained practically the same as last year.

Of the total tonnage transported 41,260 tons were carried by the company's steamers and 117,049 by chartered steamers. In 1902 the former carried 104,062 tons and the latter 54,340 tons.

The Pacific line accounts show a debit to freight earnings of \$164.98 for overcharges settled during the year.

JOINT RAILROAD AND STEAMSHIP RECEIPTS.

The total receipts of all the accounts grouped together under this heading amounted to \$476,065.45, an increase of \$18,029.49, or 3.94 per cent, as compared with 1902. There is included in this total the sum realized in September last from the assignment of the credit allowed this company in December, 1891, by the comptroller of the State of New York, upon revision and readjustment by him of the taxes paid on the capital stock for the years 1881, 1882, 1883, and 1884.

The following table will show the number of tons lightered in Panama Bay and handled on La Boca wharf during the year 1903, as compared with 1902:

	1903.	1902.	Increase.	Decrease.
	<i>Tons.</i>	<i>Tons.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Merchandise	202,439	209,086		3.18
Lumber	191	38	402.63	
Coal	8,566	20,980		59.22
Total	211,186	230,104		8.22

EXPENDITURES.

The revenue expenditures of 1903 and 1902 compare as under:

	1903.	1902.	Increase.	Decrease.
Railroad	\$562,240.19	\$594,709.99		\$32,469.80
Steamship line:				
Atlantic service	865,808.78	789,984.97	\$75,818.81	
Pacific service	1,601.46	252,327.10		250,725.64
Joint railroad and steamship expenses	317,342.56	319,093.71		1,751.15
Appropriations for depreciation and special repairs of steamers and tugs	13,650.00	6,000.00	7,650.00	
Total	1,760,337.99	1,962,115.77		201,777.78

This table shows a decrease of \$201,777.78 in total revenue expenditures, while there was a decrease of \$98,764.34 in total earnings.

Railroad.

CONDUCTING TRANSPORTATION.

The expenses of this department, compared with 1902, show a decrease of \$4,017.52, or 1.17 per cent, while the total tonnage moved increased 2,849 tons, or 0.82 per cent.

An important expense was incurred by the free transportation of marines and sailors of the United States engaged in maintaining the security of the transit upon the Isthmus.

From January 1 to December 31, 1903, there were also transported, without charge, 5,755 troops and 11,098 officials of the Republics of Colombia and of Panama.

MAINTENANCE OF EQUIPMENT.

The total charges or expenses under this heading amounted to \$113,765.69, a decrease of \$4,314.56, or 3.65 per cent, as compared with last year.

During the last year engines Nos. 2, 3, 10, 30, 34, 36, and 37 were thoroughly repaired, No. 10 having also received a new boiler. Twenty-three others received ordinary running repairs. Many of these will need new boilers during this year and next.

The passenger equipment is all in good condition, requiring only usual running repairs; 9 coaches and 4 baggage cars were completely overhauled during 1903. General repairs, amounting to rebuilding, were given to 79 box cars, 16 coal, 26 flat, 9 stock cars, and 1 caboose; also, there were rebuilt for the road department 1 tool car, 1 derrick car, and 4 camp cars. The entire freight equipment is therefore in good order.

MAINTENANCE OF WAY AND STRUCTURES.

The track, bridges, and station buildings have been maintained in good condition, at an expenditure of \$68,814.16, a decrease of \$22,655.77, or 24.77 per cent.

A stone pier and steel trestle have been erected under the bridge over the Rio Grande upon the Culebra deviation and the floor system reinforced by arrangement with the canal company, and trains are now operated over the bridge without slowing down. It was necessary also to strengthen two other iron bridges, and because of severe floods to rebuild the ends of 22 stone culverts.

STEAMSHIP LINES.

The operating expenses of the Atlantic line (which include \$6,896.99 for expenses of steamships *Advance* and *Finance* while out of commission and not undergoing repairs) were \$865,503.78, an increase of \$75,518.81, or 9.56 per cent.

The steamship *Finance* was laid off on January 27, 1903, and her place in the line supplied by the chartering of an American steamship, since which date only one vessel of the company's fleet, the steamship *Allianca*, has been operated.

To maintain a weekly service and provide sufficient tonnage three chartered passenger vessels have been employed during most of the year, the payments for hire of steamers exceeding those of last year by \$113,533.98.

The Pacific line accounts show a total charge to steamer expenses of \$1,601.46, which is almost wholly for loss and damage freight claims settled during the year.

JOINT RAILROAD AND STEAMSHIP EXPENSES.

The combined expenditures under this head, which include general expenses, foreign agency expenses, lighterage, docks and wharves, real estate, etc., amounted to \$317,342.56, a decrease of \$1,751.15, or 0.55 per cent.

The floating equipment in Panama Bay has been well maintained, except launches 1, 2, 4, and 5, not worth extensive repairs; all launches have, however, been scraped and painted; also the tug *Ancon*. The *Bolívar* has been in use during the entire year and is in thoroughly good condition.

GENERAL REMARKS.

During the period from 1894 to 1903, inclusive, the percentage of total expenses to gross earnings was as follows:

	Per cent.
1894.....	69.93
1895.....	61.63
1896.....	53.94
1897 (including taxes and appropriations for depreciation, etc.).....	61.12
1898 (including taxes and appropriations for depreciation, etc.).....	64.91
1899 (including taxes and appropriations for depreciation, etc.).....	64.66
1900 (including taxes and appropriations for depreciation, etc.).....	65.25
1901 (including taxes and appropriations for depreciation, etc.).....	64.72
1901 (or including Pacific line not operated in 1900).....	76.34
1902 (including taxes and appropriations for depreciation, etc.).....	65.87
1902 (or including Pacific line operated for six months).....	71.02
1903 (including appropriations for depreciation and special repairs).....	66.01

Extensive repairs to the boilers, hull, and rigging of the steamship *Advance*, begun in November, 1902, were discontinued upon the boilers being condemned and the preliminary work on the hull showing up other defects, to correct which required the practical rebuilding of the ship, not contemplated then. In October, 1903, several shoe plates of the steamship *Allianca* were renewed, bulkhead plating replaced where corroded, etc. Of the total outlays for these repairs, \$23,007.71 was carried to the debit of "Fund for replacement of boilers and special repairs to steamers and tugs," and \$6,750 was appropriated out of net earnings and credited to said account as this year's proportion of such expenditures.

On November 30 a contract was concluded with the firm of Wm. Cramp & Sons for the rebuilding of the *Advance* and *Finance*, both of these steamships being now in their shipyard at Philadelphia in process of reconstruction.

The dredging of the basins and of the maritime channel at La Boca has been continued steadily through the year with one powerful dredge; the necessary depths have been maintained.

The electric transporters procured last year required the erection of a considerable addition to the electric plant and to the conducting wires, which have been installed, and the whole are in successful operation, with excellent results in the handling of cargoes. It was thought judicious, in making these additions, to provide for extending the use of electricity to other transporters.

The wharves at Colon and Panama have received all necessary repairs, with the exception of the American wharf at Panama, which will require an expenditure of about \$4,000. The creosoted piles and timbers required for this work are already on the Isthmus. The coal pier and the English wharf have been overhauled, rebraced, and put in sound condition.

The company's buildings have received the usual expenditure necessary in the climate of the Isthmus. Much attention has also been given to the improvement of the drainage at Colon in the vicinity of the company's buildings, and to the prevention of the breeding of mosquitoes.

The land department has continued to increase its revenues, showing a larger gain over the previous year than in any other year—about \$3,400.

The electric light plant at Colon, operated in connection with the ice plant, continues to show a small profit.

The water supply for Panama was improved by the construction of a large well at La Boca Junction and an arrangement for piping the water from cars into the storage tank at Panama.

During the year 1903 there was comparative peace on the Isthmus, only disturbed by the revolution which resulted in the independence of the Department of Panama and the organization of the new Republic, happily without bloodshed or destruction of property.

The thanks of the board are due to the employees of the company for meritorious and faithful service.

Respectfully,

CHARLES PAINE, General Manager.

TABLE A.—*Balance sheet, December 31, 1901.*

RESOURCES.	
Cost of road, real estate, and equipment.....	\$12,045,258.32
New terminal at La Boca.....	
Floating equipment:	
Steamers <i>Alliance</i> , <i>Finance</i> , and <i>Advance</i> , reduced value December 31, 1902.....	\$267,419.27
Tugs and lighters, reduced value December 31, 1902.....	\$318,137.58
Depreciation fund for tugs.....	2,100.00
	316,087.58
	583,456.80
Total.....	12,628,715.12
Bonds in treasury:	
158 6 per cent Panama Railroad Company sinking-fund subsidy bonds.....	158,000.00
935 4½ per cent twenty-year gold sinking-fund bonds.....	936,037.50
	1,094,037.50
On deposit with financial agents for redemption of bonds:	
6 per cent subsidy bonds.....	10,000.00
Advance of subsidy to Republic of Colombia.....	887,000.00
Improvement and construction accounts.....	56,570.50
Fund for replacement of boilers and special repairs to steamers and tugs.....	34,002.50
Current assets:	
Cash in banks and with agents.....	469,994.66
Coal and supplies on hand.....	176,412.86
Due from connecting companies.....	108,060.58
Due from United States Government.....	24,437.16
Due from Republic of Colombia.....	4,999.93
Due from companies and individuals.....	48,078.50
Accrued interest on deposits.....	13,682.96
Accrued interest on securities owned.....	1,777.50
Unadjusted accounts.....	12,513.33
Prepaid insurance and charter of steamers.....	17,696.98
	877,558.41
	15,581,879.12
LIABILITIES.	
Capital stock.....	\$7,000,000.00
4½ per cent twenty-year sinking-fund gold bonds (authorized issue, \$4,000,000):	
Issued to date (4,000 bonds, less 701 bonds previously redeemed).....	\$3,299,000.00
Drawn for redemption in 1908.....	140,000.00
	3,159,000.00
Total capital stock and mortgage liabilities.....	10,159,000.00
6 per cent gold fund subsidy bonds.....	887,000.00
Bonds drawn for redemption not presented for payment:	
6 per cent subsidy bonds.....	10,000.00
Accrued interest on bonds:	
4½ per cent twenty-year gold bonds (2,246 bonds).....	25,267.50
6 per cent subsidy bonds.....	8,870.00
	34,137.50
Funds for redemption of bonds:	
4½ per cent twenty-year gold bonds.....	62,946.78
6 per cent subsidy bonds.....	76,005.00
	138,951.78
Due Republic of Panama.....	21,875.00
Allowance to cover excess interest over contract rate on 4½ per cent bonds sold to prepay indebtedness due contractors new terminal at La Boca on October 15, 1905.....	26,061.95
Current liabilities:	
Isthmus drafts not presented.....	11,100.95
Coupons not presented.....	1,562.50
Audited vouchers.....	97,941.51
Unclaimed dividends.....	119.00
Due deceased or missing employees.....	2,199.02
	112,922.98
Balance to credit of profit and loss.....	4,191,929.91
	15,581,879.12

^a 887 6 per cent gold sinking-fund subsidy bonds of \$1,000 each, amounting to \$887,000, issued November 1, 1880, fall due November 1, 1910.

To meet this bonded indebtedness, \$225,000 annually of the Colombian Government subsidy was pledged till March 27, 1906, the same to be applied by the company, first, to the payment of the interest, and, second, as a cumulative sinking fund for the redemption of the principal; the bonds to be drawn yearly in September to an amount equal to the then surplus of the subsidy sinking fund, the drawn bonds to be paid on November 1, after each drawing, and thereby redeeming the whole issue in 1908.

S. DEMING, *Treasurer.*

TABLE B.—*Profit and loss account, December 31, 1903.*

DEBIT.

To one hundred and sixteenth dividend	\$140,000.00
one hundred and seventeenth dividend	140,000.00
one hundred and eighteenth dividend	280,000.00
Operating expenses	1,746,852.97
Appropriations for depreciation of tugs and special repairs of steamers and tugs	13,650.00
Fixed charges	502,645.00
Uncollectible accounts, etc., written off	29.85
Balance, assets over liabilities, December 31, 1903	4,191,929.91
	<hr/>
	7,015,107.78

CREDIT.

By balance, December 31, 1902	\$4,201,587.08
Gross earnings	2,664,216.27
4½ per cent twenty-year sinking-fund gold bonds redeemed	140,000.00
Adjustment of accounts of previous years	8,764.87
Value of fittings taken from dismantled lighters, etc	540.00
	<hr/>
	7,015 107.78

APPENDIX.

Board of directors, Panama Railroad Company.

[Elected April 4, 1904.]

Name.	Re- signed.	Replaced by—	Date.
	1904.		1904.
J. Edward Simmons.....			
Geo. Whaley.....	Sept. 15	W. B. Parsons.....	Sept. 15.
E. A. Drake.....			
S. M. Felton.....			
J. H. Parker.....			
Wm. N. Cromwell.....			
Vernon H. Brown.....			
Chas. Einsiedler.....	July 14	J. G. Walker.....	July 14.
R. M. Gallaway.....	Oct. 27	G. W. Davis.....	Oct. 27.
A. L. Hopkins.....	do.	B. M. Harrod.....	Do.
C. B. Comstock.....	do.	F. G. Hecker.....	Do.
J. G. Buchanan.....	July 14	W. H. Burr.....	July 14.
C. Paine.....	do.	C. E. Grunsky.....	Do.
F. G. Hecker.....	Nov. 23	Vacancy.....	

At present—
 12 directors acting.
 1 vacancy.
 —
 13

There has been one dividend declared by the board of directors of the Panama Railroad Company since the election to the board of the members of the Isthmian Canal Commission, and that was of 5 per cent, payable February 1, 1905.

On that day checks were mailed to the members of the Isthmian Canal Commission as follows:

To Admiral J. G. Walker for \$5, same being 5 per cent on 1 share standing in his name.

To Admiral J. G. Walker, chairman Isthmian Canal Commission, for \$470, same being 5 per cent on 94 shares standing in his name as chairman of the Isthmian Canal Commission.

To Wm. H. Burr for \$5, same being 5 per cent on 1 share standing in his name.

To C. E. Grunsky for \$5, same being 5 per cent on 1 share standing in his name.

To Wm. B. Parsons for \$5, same being 5 per cent on 1 share standing in his name.

To G. W. Davis for \$5, same being 5 per cent on 1 share standing in his name.

To F. G. Hecker for \$5, same being 5 per cent on 1 share standing in his name.

To B. M. Harrod for \$5, same being 5 per cent on 1 share standing in his name.

Total payment, \$505 on 101 shares.

Statement of fees paid to directors of the Panama Railroad Company who are members of the Isthmian Canal Commission.

Date.	Meeting.	Directors present.	Amount paid each.
1904.			
July 14	Board	J. G. Walker	\$25
		W. H. Burr	25
		J. G. Walker	25
July 26	do	W. H. Burr	25
		C. E. Grunsky	25
Sept. 15	do	W. H. Burr	25
		J. G. Walker	25
Sept. 22	do	C. E. Grunsky	25
		Wm. B. Parsons	25
		J. G. Walker	25
		W. H. Burr	25
Oct. 13	do	C. E. Grunsky	25
		Wm. B. Parsons	25
Oct. 14	Committee	do	10
Oct. 18	do	do	10
Oct. 21	do	do	10
Oct. 25	do	do	10
		J. G. Walker	25
Oct. 27	Board	W. H. Burr	25
		C. E. Grunsky	25
Oct. 28	Committee	Wm. B. Parsons	10
Nov. 1	do	do	10
Nov. 9	do	do	10
		J. G. Walker	25
		W. H. Burr	25
Nov. 10	Board	C. E. Grunsky	25
		Wm. B. Parsons	25
		B. M. Harrod	25
Nov. 18	Committee	Wm. B. Parsons	10
Nov. 22	do	do	10
		W. H. Burr	25
Nov. 23	Board	C. E. Grunsky	25
		Wm. B. Parsons	25
		B. M. Harrod	25
Nov. 25	Committee	Wm. B. Parsons	10
Nov. 29	do	do	10
Dec. 2	do	do	10
Dec. 6	do	do	10
		W. H. Burr	25
Dec. 8	Board	C. E. Grunsky	25
		Wm. B. Parsons	25
		B. M. Harrod	25
Dec. 9	Committee	Wm. B. Parsons	10
Dec. 16	do	do	10
Dec. 20	do	do	10
		J. G. Walker	25
Dec. 22	Board	W. H. Burr	25
		C. E. Grunsky	25
		Wm. B. Parsons	25
Dec. 23	Committee	do	10
Dec. 27	do	do	10
1905.			
Jan. 3	do	do	10
Jan. 6	do	do	10
Jan. 10	do	do	10
		J. G. Walker	25
		W. H. Burr	25
Jan. 12	Board	C. E. Grunsky	25
		Wm. B. Parsons	25
		B. M. Harrod	25
Jan. 13	Committee	Wm. B. Parsons	10
Jan. 30	Board	J. G. Walker	25
		do	25
Feb. 8	do	C. E. Grunsky	25
		B. M. Harrod	25

Statement of fees paid to directors of the Panama Railroad Company who are members of the Isthmian Canal Commission—Continued.

SUMMARY.

Name of director.	Meetings attended.		Total of fees received.
	Committee, at \$10.	Board of directors, at \$25.	
J. G. Walker		10	\$250
W. H. Burr		10	250
C. E. Grunsky		10	250
Wm. B. Parsons	22	7	395
B. M. Harrod		5	125

Total of fees received by directors of Panama Railroad Company who are members of the Isthmian Canal Commission, for attendance at meetings of the board of directors and executive and finance committee, \$1,270.

Attendance fees paid by Panama Railroad Company to Director J. G. Walker.

Date of election as director.	Meetings attended.		Fees received.
	Board.	Committee.	
1904.	1904.		
July 14.	July 14.		\$25
	July 26.		25
	September 22.		25
	October 13.		25
	October 27.		25
	November 10.		25
	December 22.		25
	1905.		
	January 12.		25
	January 30.		25
	February 8.		25
Total			250

Attendance fees paid by Panama Railroad Company to Director W. H. Burr.

Date of election as director.	Meetings attended.		Fees received.
	Board.	Committee.	
1904.	1904.		
July 14.	July 14.		\$25
	July 26.		25
	September 15.		25
	October 13.		25
	October 27.		25
	November 10.		25
	November 23.		25
	December 8.		25
	December 22.		25
	1905.		
	January 12.		25
Total			250

Attendance fees paid by Panama Railroad Company to Director C. E. Grunsky.

Date of election as director.	Meetings attended.		Fees received.
	Board.	Committee.	
1904.	1904.		
July 14	July 26		\$25
	September 22		25
	October 13		25
	October 27		25
	November 10		25
	November 23		25
	December 8		25
	December 22		25
	1905.		
	January 12		25
	February 8		25
Total			250

Attendance fees paid by Panama Railroad Company to Director Wm. B. Parsons.

Date of election as director.	Meetings attended.		Fees received.
	Board.	Committee.	
1904.	1904.	1904.	
Sept. 15	September 22		\$25
	October 13		25
		October 14	10
		October 18	10
		October 21	10
		October 25	10
		October 28	10
		November 1	10
		November 9	10
	November 10		25
		November 18	10
		November 22	10
	November 23		25
		November 25	10
		November 29	10
		December 2	10
		December 6	10
	December 8		25
		December 9	10
		December 16	10
		December 20	10
	December 22		25
		December 23	10
		December 27	10
		1905.	
		January 3	10
		January 6	10
		January 10	10
	1905.		
	January 12		25
		January 13	10
Total			395

From directors' meeting \$175
 From committee meetings..... 220

Attendance fees paid by Panama Railroad Company to Director B. M. Harrod.

Date of election as director.	Meetings attended.		Fees received.
	Board.	Committee.	
1904. October 27.....	1904.		
	November 10.....		\$25
	November 23.....		25
	December 8.....		25
	1905.		
	January 12.....		25
	February 8.....		25
Total.....			125

ISTHMIAN CANAL COMMISSION,
Washington, D. C., February 18, 1905.

Hon. W. P. HEPBURN,

Chairman Committee on Interstate and Foreign Commerce.

SIR: Referring to the testimony before your committee yesterday, concerning the acceptance by members of the Isthmian Canal Commission of fees for attendance at meetings of the board of directors of the Panama Railroad Company, I beg that you will submit to your committee the following extract from the minutes of the Commission of October 11:

"The Commissioners were also informed by the chairman that at a recent conference with the President the matter of the attendance fee paid to the directors attending meetings provided by the by-laws of the Panama Railroad Company was referred to, and that the President desired the Commission to be informed that his order fixing the compensation of the Commissioners was not intended to prevent the acceptance of such fee."

My connection with the board as a director was subsequent to the settlement of the question as above cited.

Respectfully,

B. M. HARROD.

ISTHMIAN CANAL COMMISSION,
Washington, D. C., February 18, 1905.

Hon. Wm. P. HEPBURN,

*Chairman Interstate and Foreign Commerce Committee,
House of Representatives.*

DEAR SIR: Bearing upon the matter of attendance fees paid to the directors of the Panama Railroad Company, I inclose for your information, and for such use as you may desire to make thereof, a carbon copy of a letter written by me to the secretary of the board of directors in reference to this matter.

I desire to ask your attention also to the following extract from the minutes of the Commission's proceedings on October 11, 1904:

"The commissioners were also informed by the chairman that at a recent conference with the President the matter of the attendance fee, paid to the directors attending meetings provided by the by-laws of the Panama Railroad Company was referred to, and that the President desired the Commission to be informed that his order, fixing compensation of the commissioners, was not intended to prevent the acceptance of such fee."

Very respectfully,

C. E. GRUNSKY.

STEAMSHIP FINANCE, September 13, 1904.

Mr. E. A. DRAKE,

*Secretary Board of Directors Panama Railroad Company,
24 State Street, New York City, N. Y.*

DEAR SIR: Inclosed I hand you, unopened, an envelope that was handed to me at the close of the first and only directors' meeting, July 26, which I have attended. It contains I suppose the attendance fee to which the directors are entitled under the company's by-laws. I did not insist upon declining this fee at the time it was handed me in order to avoid possible embarrassment of my associates, and because I desired to read again the President's letter which makes our services on the board of directors a part of our official duties for which we are otherwise compensated. I

can not construe the attendance fee other than compensation, and therefore must decline to accept any such fee for attendance at meetings.

As our board of directors must be considered to be acting for and in the interest of the owners of the Panama Railroad, and in this case there is practically sole ownership by the United States, no action should be taken which is not in accord with the views of the proper United States authorities. It has not been possible for me to ascertain as yet what the wishes of these authorities are in the matter of building new ships and increasing indebtedness. For this reason I must ask you to convey to the executive committee a suggestion from me that no steps be taken in this matter beyond planning the ships, until there is no further question as to the wish of the majority stockholder in this matter. I speak of course for myself only, and this letter will indicate to you that one director at least has not yet been able to learn, either through the Commission or otherwise, what the United States wants done.

Yours, very respectfully,

C. E. GRUNSKY.

A. N. 39, 500. Dec. '03. Tariff No. 2—C. T. (Supersedes conflicting rates of earlier date.) "Panama route." Panama R. R. Steamship Line, Panama Railroad, and connecting steamer lines. Tariff of freight rates from New York and common points to California terminals, viz, Sacramento and Stockton. Taking effect January 18, 1904. (Subject to change without notice.) Mark and consign all shipments to the care of Panama R. R. Steamship Line, 24 State St., New York. R. L. Walker, traffic manager; A. E. Paterson, contracting agent; 24 State street, New York. B. H. Langley, agent, 421 Market street, San Francisco.

From New York and common points^a to Sacramento and Stockton, Cal.

Class rates, subject to the western classification.

[In cents per 100 pounds.]

1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
180	150	130	115	105	105	85	80	80	70

Subject to change without notice. Commodity rates from New York will be those of "Sunset" Tariff, No. C 22. Effective January 18, 1904, and supplements thereto, less the following discounts: Carloads, 20 per cent; less carloads, 30 per cent, observing minimum of 50 cents per 100 pounds. Minimum charge for any single shipment will be \$3.50.

In addition to the regular transportation charges provided above, shipments are subject to toll levied in San Francisco by the State of California. Freight received at Pier 67, North River, New York City. Shipments from Philadelphia should be forwarded by the "Clyde Line." Shipments from Baltimore should be forwarded by the "New York and Baltimore Transportation Line." Shipments from Boston should be forwarded by either "Fall River Line," "Metropolitan S. S. Co.," "New England Railroad," "Norwich Line" or "Providence Line." New York, December 22, 1903.

A. N. 39, 1000, July, '04. Tariff No. 4.—S. C. (Supersedes conflicting rates of earlier date.) "Panama route." Panama R. R. Steamship Line, Panama Railroad, and connecting steamer lines. Tariff of freight rates from New York and common points to Southern California points, viz, Los Angeles, San Diego, and Santa Barbara. Taking effect July 1, 1904 (subject to change without notice). Mark and consign all shipments to the care of Panama R. R. Steamship Line, 24 State street, New York. R. L. Walker, traffic manager; A. E. Paterson, contracting agent; 24 State street, New York. B. H. Langley, agent, 421 Market street, San Francisco.

From New York and common points to Los Angeles, San Diego, and Santa Barbara, California.

^a When through rates are 70 cents per 100 pounds or over, via the Panama route, they will apply from Boston, Philadelphia, Baltimore and common points, provided the local freight charges to New York plus transfer do not exceed 20 cents per 100 pounds, and provided further, that all shipments from points outside of New York city are consigned to the care of Panama Railroad Steamship Line, 24 State St., New York.

Class rates, subject to the western classification.

[In cents per 100 pounds.]

1	2	3	4	5	A	B	C	D	E
180	150	130	115	105	105	85	80	80	70

Subject to change without notice. Commodity rates from New York will be those of transcontinental west-bound tariffs in effect at time of shipment less the following discounts: Carloads, 20 per cent; less carloads, 30 per cent; observing minimum of 60 cents per 100 pounds. Minimum charge for any single shipment will be \$3.50. Charges from interior points plus transfer in New York will be absorbed out of the through rates when not in excess of 20 cents per 100 pounds, but in no case can maximum absorption leave less than 60 cents per 100 pounds, from New York to Pacific Coast terminals mentioned. All shipments from points outside of New York City must be consigned to the care of Panama Railroad Steamship Line, 24 State St., New York. In addition to the regular transportation charges provided above, shipments are subject to toll levied in San Francisco by the State of California. Freight received at pier, foot West 27th St., New York City. Shipments from Philadelphia should be forwarded by the "Clyde Line." Shipments from Baltimore should be forwarded by the "New York and Baltimore Transportation Line." Shipments from Boston should be forwarded by either "Fall River Line," "Metropolitan S. S. Co.," "New England Railroad," "Norwich Line," or "Providence Line." New York, July 1, 1904.

Tariff No. 6—N. P. C. (Supersedes conflicting rates of earlier date.) "Panama Route." Panama R. R. Steamship Line, Panama Railroad, Pacific Mail Steamship Co., connecting in San Francisco with the Oregon Railroad and Navigation Co. and Pacific Coast S. S. Co. Tariff of freight rates from New York to North Pacific coast points, viz: Portland, Astoria, Seattle, Tacoma, Port Townsend, Everett, Anacortes, New Whatcom (Bellingham Bay), Vancouver and Victoria, taking effect July 1, 1904 (subject to change without notice). Mark and consign all shipments to the care of Panama Railroad Steamship Line, 24 State street, New York. R. L. Walker, Traffic Manager; A. E. Paterson, Contracting Agent, 24 State street, New York. B. H. Langley, Agent, 421 Market street, San Francisco.

A N 31.—Revised. [1000 July '04] From New York to North Pacific coast points, viz: Portland, Astoria, Seattle, Tacoma, Port Townsend, Everett, Anacortes, New Whatcom (Bellingham Bay), Vancouver and Victoria.

Class rates, subject to the western classification.

[In cents per 100 pounds.]

1	2	3	4	5	A	B	C	D	E
180	150	130	115	105	105	85	80	80	70

Subject to change without notice. Commodity rates from New York will be those of transcontinental west-bound tariffs in effect at time of shipment less the following discounts: Carloads, 20 per cent; less carloads, 30 per cent; observing minimum of 60 cents per 100 pounds. Minimum charge for any single shipment will be \$4. Charges from interior points plus transfer in New York will be absorbed out of the through rates when not in excess of 20 cents per 100 pounds, but in no case can maximum absorption leave less than 60 cents per 100 pounds from New York to Pacific coast terminals mentioned. All shipments from points outside of New York City must be consigned to the care of Panama Railroad Steamship Line, 24 State street, New York. In addition to the regular transportation charges provided above, shipments are subject to toll levied in San Francisco by the State of California. Freight received at pier, foot West 27th street, New York City. Shipments from

Philadelphia should be forwarded by the "Clyde Line." Shipments from Baltimore should be forwarded by the "New York and Baltimore Transportation Line." Shipments from Boston should be forwarded by either "Fall River Line," "Metropolitan S. S. Co.," "New England Railroad," "Norwich Line," or "Providence Line." New York, July 1, 1904.

PANAMA RAILROAD COMPANY, PANAMA RAILROAD STEAMSHIP LINE.

Supplement No. 1 to S. F. Rate Circular No. 7, effective January 26, 1904.—Special rates of freight New York to San Francisco.—For use of agents only.

[Rates are shown in cents per 100 pounds.]

No.	Articles.	From—	Rate.
1	Bolts, iron.....carload.	New York...	45
2	Graphophones and discs	do	180
3	Horseshoes	do	45
4	Iron: Bar, band, hoop and plate, pipe, bolts, nuts, rivets, nails; and horseshoes, in straight or mixed carloads.....	do	45
5	Lard and lard compounds.....	do	50
6	Nuts, iron	do	45
7	Nails	do	45
8	Phonographs and materials	do	180
9	Rivets, iron.....	do	45
10	Reginas and stands	do	180
11	Slot machines, boxed	do	180
12	Talking machines and supplies	do	180
13	Typewriting machines	do	180

This supplement cancels Supplement No. 1, to S. F. Rate Circular No. 6 effective February 5, 1901.

Effective March 2, 1904.

R. L. WALKER,
Traffic Manager, 24 State Street, New York.

A N 16, 2000 Feb. '04. S. F. Rate Circular No. 7. (Supersedes conflicting rates of earlier date.) "Panama route." Panama R. R. Steamship Line. Panama Railroad. Tariff of freight rates from New York and common points to San Francisco. Taking effect January 26, 1904. (Subject to change without notice.) Mark and consign all shipments to the care of Panama R. R. Steamship Line, 24 State street, New York. R. L. Walker, Traffic Manager, A. E. Paterson, Contracting Agent, 24 State street, New York. B. H. Langley, Agent, 421 Market street, San Francisco.

From New York and common points^a to San Francisco.

Class rates, subject to the western classification.

[In cents per 100 pounds.]

1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
180	150	130	115	105	105	85	80	80	70

Subject to change without notice. Commodity rates from New York will be those of transcontinental west-bound tariffs in effect at time of shipment less the following discounts: Carloads, 20 per cent; less carloads, 30 per cent; observing minimum of 40

^a When through rates are 60 cents per 100 pounds or over via the Panama route, they will apply from interior points provided the local freight charges to New York plus transfer do not exceed 20 cents per 100 pounds, and provided further, that all shipments from points outside of New York City are consigned to the care of Panama Railroad Steamship Line, 24 State street, New York.

cents per 100 pounds. Minimum charge for any single shipment will be \$3 subject to the following exceptions from New York: Oil (not petroleum) in barrels or cases in carloads, minimum weight 24,000 pounds (calculated on actual gross weight) 50 cents per 100 pounds. In addition to the regular transportation charges provided above, shipments are subject to toll levied in San Francisco by the State of California. Freight received at Pier 67, North River, foot West 27th st., New York City. Shipments from Philadelphia should be forwarded by the "Clyde Line." Shipments from Baltimore should be forwarded by the "New York and Baltimore Transportation Line." Shipments from Boston should be forwarded by either "Fall River Line," "Metropolitan S. S. Co.," "New England Railroad," "Norwich Line," or "Providence Line." New York, January 10, 1904.

A. N. 102. No. 1. Panama Railroad Company, Panama Railroad Steamship Line.

Tariff of special rates to San Francisco, Cal., from points as indicated below—Subject to cancellation on 10 days' notice.

[Effective August, 1903. For use of agents only. Supersedes change in rate slips Nos. B 120, 145, 353, 354, 453, 483, 486, 500, 522, 523, 524, 525, 533, 540, 543, 547, 551, 580, 584, 635, 636, 640, 642, 643, 652, 653, 662.]

For—	Articles.	Rate.	From—	Remarks.
American Wire & Steel Co.	Wire, iron plain or barbed. C. L..	45c. pr. 100 lbs.	New York.	
Do	Wire, insulated, broom and binding, hay and shingle bands, wire springs, coppered or tinned, wire rope and cable (no piece over 4,000 lbs.).....C. L..	50c. pr. 100 lbs.	"	
Babbitt, B. T.....	Soap, common soap powder, and con. lye.....C. L..	45c. pr. 100 lbs.	"	
Benjamin, Geo. P....	General merchandise.....A. Q..	C. L. rates....	N. Y. and common points.	
Blake Moffit & Towne.	Flat paper and cardboard, A. Q.	75c. pr. 100 lbs.	"	Abs. 15c. pr. 100 lbs.
Bonestell Richardson & Co.	Book paper, N. S. C.....A. Q..	60c. pr. 100 lbs.	"	
Cluett, Peabody & Co.	Collars, cuffs, and shirts.....	130c. pr. 100 lbs.	New York.	
Dinkelspell, L., & Sons.	Dry goods.....	40% off rail....	"	
Dolliver & Bro.....	General merchandise.....A. Q..	C. L. rate.....	N. Y. and common points.	
Dunham Carrigan & H. Co.	" "A. Q..	C. L. rate.....	"	
P. H. & S. Co.....				
Eastman Kodak Co.	Kodaks and photo supplies.....	180c. pr. 100 lbs.	New York.	
Elkus-Brenner Co., The.	Dry goods.....	40% off rail....	"	
Goldstone Bros.	"	40% off rail....	"	
Holbrook, Merrill & S. Co.	Stamped ware, nested.....A. Q..	C. L. rate.....	"	
Ide, Geo. P.....	Collars, cuffs, and shirts.....	130c. pr. 100 lbs.	"	
Lowenberg & Co....	Dry goods.....	40% off rail....	"	
Meyerstein Co., The.		40% off rail....	"	
Roebblings, J. A., Sons' Co.	Wire, see Am. W. & Steel Co..	Same as A. W. & S. Co.	"	
Sternheim, S., & Son.	E ware, hotel china, com. tumblers and jelly glasses, A. Q.	70c. pr. 100 lbs.	"	
Do	Lamp goods, consisting of metal lamps, fix's, and trimmings.	140c. pr. 100 lbs.		
Do	Brass and bronze articles, other than lamp goods.	150c. pr. 100 lbs.		
Do	Terra cotta or plaster of Paris busts and orn.	100c. pr. 100 lbs.		
Williamson Brothers.	Candy, rel. to 5c. per lb. valuation; 10 ton lots.	80c. pr. 100 lbs.		

Cancelled.

Unless otherwise noted, rates applying from N. Y. and com. points will be subject to usual absorption of 20 cents per 100 pounds.

Effective August 26th, 1903. R. L. Walker, traffic manager, 24 State St., New York.

**CONTRACT BETWEEN THE REPUBLIC OF NEW GRANADA AND
THE PANAMA RAILROAD COMPANY, MADE IN 1850.**

*Contract in respect to the privilege of constructing a railroad from one ocean to the other
by the Isthmus of Panama.*

The executive power, being authorized by the legislative decree of 12th June, 1849, to amplify and amend the contract entered into in Washington on the 28th of December, 1848, for the construction of a railroad on the Isthmus of Panama, and it being advisable for this purpose to conclude and execute a new contract, in which the rights acquired and the obligations incurred by the Government of New Granada and the Panama Railroad Company may be clearly established, without need of reference to the contracts previously entered into on the subject, the citizen President of the Republic of New Granada has thought proper to empower for this purpose Victoriano de Diego Paredes, secretary of state for foreign affairs of the said Republic, and the Panama Railroad Company, John Lloyd Stephens, vice-president of said company and its commissioner in New Granada, who, after mature conference, have agreed upon the following contract:

CHAPTER FIRST.**OF THE RIGHTS, PRIVILEGES, GIFTS, FRANCHISES, AND EXEMPTIONS GRANTED TO THE
COMPANY.****TITLE FIRST.—Grant of privileges.****ARTICLE I.**

The Government of New Granada grants to the company styled the Panama Railroad Company, its representatives or assigns, the exclusive right of building a railroad between the two oceans across the Isthmus of Panama.

ARTICLE II.

The privilege of building a railroad granted to the company by the preceding article shall continue in force forty-nine years, to be computed from the day of the completion of the road and its being opened to public use. Nevertheless, said privilege shall terminate before the expiration of the said forty-nine years if before their expiration the Government shall have resumed the privilege by virtue of the right and power reserved by the following conditions:

At the expiration of twenty years, counting from the day on which the railroad shall have been completed and opened to public use, the Government may resume the privilege for the benefit of New Granada, on paying the sum of five millions of dollars as the whole amount of indemnification. If the privilege be not resumed at that date, it shall continue in force ten years longer for the benefit of the company, at the end of which the Government may resume it on paying four millions of dollars. If the privilege be not resumed even at the expiration of the last-mentioned period, then it shall continue in force for ten years longer, at the expiration whereof the Government may resume the same on the payment of two millions of dollars. To entitle the Government to avail itself of the rights thus reserved to it of resuming the privilege granted, it must notify the company of its intention so to do at least one year before the day of the completion of either of the three periods above mentioned.

ARTICLE III.

The sum to be paid to the company on the resumption of the privileges in either of the three cases mentioned in the preceding article, shall be in specie, in American dollars, without deduction; it being well understood that in all other cases in which mention is made of dollars in this contract it is of American dollars, without deduction.

ARTICLE IV.

The company shall, after the resumption of the privilege, remain in possession of the lands granted to it gratuitously and perpetually by the eighteenth article of this contract.

ARTICLE V.

The railroad from ocean to ocean shall be completed within six years, to commence from the expiration of four months after the present act of concession shall have been approved by the Congress of the Republic, and the fact of its completion shall be proved before the governor of Panama at the request of the company, by a statement drawn up on each side, after discussion between it and the agent or agents of the executive power commissioned for that purpose.

ARTICLE VI.

While the exclusive privilege granted to the company, or persons engaged in the enterprise of building the railroad from one ocean to the other, continues in force, the Government of the Republic agrees, neither itself to build, nor grant to any other company whatever, under any title whatever, the right of building any other railroad on the Isthmus of Panama; and it is likewise stipulated that, while the said privilege continues in force the New Granadian Government shall have no power to undertake, nor to permit any other person to undertake, without the concurrence and consent of said company, the opening of any maritime canal to unite the two oceans across the said Isthmus of Panama.

ARTICLE VII.

During the whole term specified in the preceding article, and without interfering with the completion in due season of the railroad, the company shall have also the exclusive right of making across the Isthmus of Panama any sort of road for wheel carriages, either from ocean to ocean, or to any point on the river Chagres. Consequently, the New Granadian Government binds itself not to undertake, nor to permit any other company or individual to undertake, during the term specified in this article, the building of any other macadamized carriage road, plank road, or road of any other kind suitable for the use of wheel carriages, between the two oceans, across the Isthmus of Panama; it being, nevertheless, well understood that the privilege of which this article treats, can not and must not in any manner prevent the completion, preservation, and improvement of roads which already exist, or which are actually being constructed on the said Isthmus.

ARTICLE VIII.

The company shall have, moreover, the exclusive privilege of navigating the Chagres River by steam power, until the railroad is completed from one ocean to the other, on the terms specified in this contract, and in accordance with its provisions, the company in the meantime being bound to keep constantly on said river one or more steamboats employed in transportation; but the provision in this clause shall not prevent steamboats which may now be in said river from continuing to navigate the same.

ARTICLE IX.

Exclusive privilege is also granted to the company for forty-nine years:

First. To use the ports situated at the two termini of the railroad, required for the anchorage of vessels, and for the loading and unloading of goods which are to pass over the said road.

Second. To use the landings necessary, and especially those designed for the storage and free deposit of all goods and merchandise admitted for transit across the Isthmus on the railroad built by the company. By virtue of said privilege the company may collect as a compensation for the use of the line of communication, means of transportation, ports, landings, warehouses, and establishments of all kinds belonging to it, such tolls, storage, and carriage as the company may think proper to establish.

ARTICLE X.

The executive power shall determine the forms to be observed in the landing of goods on either ocean; and the intervention therein of the officers of the Republic to prevent the effects destined for transit from one ocean to the other from being left

on the way or fraudulently introduced for internal consumption. Said precautions shall be such as may tend to prevent all frauds to the injury of the public revenue without delaying or embarrassing the rapid dispatch and transit of passengers and packages of merchandise, luggage, and goods of all kinds which may be subjects of lawful commerce.

ARTICLE XI.

During the progress of the railroad towards completion the company may open to public use such portion thereof as may be passable, and as may be judged proper to be put in use, as its partial completion progresses. The company may also then enter proportionally into the enjoyment of the grants, privileges, and advantages which form the subject of the present grant, in conformity with the provisions of the second chapter of this contract.

ARTICLE XII.

The completion of one-half of the railroad shall secure to the company the absolute possession of the entire privilege hereby granted and of all the rights appertaining to it, the company, however, remaining always bound to complete the road within six years, in pursuance of article fifth, or in eight years, in case the period of such completion of the said road should be thus far extended, in default of which it shall incur the fines and penalties provided for in the aforementioned second chapter of this contract.

ARTICLE XIII.

The company may give to the railroad between the two oceans across the Isthmus of Panama such direction as it may judge most favorable for the enterprise, the points of departure and arrival which it may consider most advantageous and convenient for the entrance and anchorage of vessels, or for ports properly so called, and for wharves, dry docks, places for lighterage, landings, warehouses, stations, hotels, and establishments of all kinds being at its free option, it being, nevertheless, stipulated that the provisions of this article shall be understood without prejudice to what is hereinafter provided in article fifty-second of this contract.

ARTICLE XIV.

The company is also at liberty to select the mode which it may consider most favorable for the construction and working of the railroad, provided it be completed in such a manner that travelers and goods passing over it may be transported in twelve hours at the farthest from one ocean to the other, and vice versa.

TITLE II.—*Grants of lands.*

ARTICLE XV.

In consideration of the difficulties of the enterprise, and of the direct and indirect advantages which the Republic must derive from it, various grants of lands are made to the company, on the continental part of the Isthmus, comprised within the limits which bounded the provinces of Panama and Veraguas, on the first day of January, one thousand eight hundred and forty-nine. The Government of the Republic grants, therefore, gratuitously to the company, on the terms mentioned in this article:

First. The lands which may be necessary for the building of the line of the railroad through its whole extent.

Second. All the lands which it may require for the establishment of seaports, dry docks, river ports, landings, wharves, places for lighterage, warehouses, stations, hotels, and in general for all purposes necessary in the construction and working of the railroad.

ARTICLE XVI.

Although, according to what is expressed in the preceding article, the company has no right to vacant lands on the islands adjacent to the Isthmus of Panama, the Government of the Republic, nevertheless, binds itself to grant to the company all the vacant lands on the island of Manzanillo, in the Bay of Limon, whenever the company considers it proper to extend the work of the railroad to said island, so that one of its extremities terminates thereon.

ARTICLE XVII.

The grant of vacant lands, mentioned in the two preceding articles, is to be understood as referring to lands belonging to the Republic. With regard to those which are the property of individuals, the company must obtain them from their owners, after valuation and proper indemnification, in the manner specified in article twenty-first.

The lands granted by the Government of the Republic, as specified in the two preceding articles, shall revert to its possession and jurisdiction immediately on the expiration of this privilege; and shall be restored to it by the company on the dates fixed for that purpose, in the prescribed form and agreeably to the conditions specified in the second chapter of this contract, wherein the duties and obligations assumed by the company are set forth.

ARTICLE XVIII.

A grant is, moreover, made to the company, gratuitously and in perpetuity, of one hundred thousand fanegadas of vacant land, in the provinces of Panama and Veraguas, within the limits set forth in the first part of the fifteenth article, which may be increased to one hundred and fifty thousand, if such extent be found at the disposal of the Government in the two provinces above mentioned, so that the Government can pronounce them vacant; and the company shall have liberty to select them, in the continental portion of said provinces, where it may judge most proper. It being stipulated, that in those which may be selected on the line of the road or in its vicinity, intervals shall be positively left, of equal extent to those which the company reserves to itself, so that the Government of the Republic may make grants or sales of land for other establishments, which may be made on said line or in the vicinity of the road.

The one hundred thousand fanegadas of land, or such number thereof, up to the number of one hundred and fifty thousand fanegadas, which may be at the disposal of the Government as vacant, and granted to the company, may be used to make therein encampments for workmen, fields for cultivation, pastures for beasts of burden and cattle, places for cutting wood, for building or for fuel; and in general for establishments, suitable for facilitating any industrial operations undertaken by the company, especially those relating to colonization.

If, which is not to be expected, there should not be within the limits of the provinces of Panama and Veraguas, mentioned in the preceding fifteenth article, the vacant lands necessary to secure to the company the one hundred thousand fanegadas specified in this article, those which may be wanted to complete the one hundred thousand fanegadas, will be granted at the points which the said company may designate in the continental part of the provinces of Carthagena, Santamarta, Riohacha, and Choco; this grant and the others mentioned in the present article being understood in reference to the vacant lands which belong to the State and to no others.

The Government of the Republic will make no grants of vacant lands within the limits aforementioned of the provinces of Panama and Veraguas until after those mentioned in this article have been delivered into the possession of the company; saving, nevertheless, the right which any other person may have acquired by virtue of grants of the Granadian Government anterior to the date of the present contract.

ARTICLE XIX.

The vacant lands granted to the company by the eighteenth article of this contract are given to it in full ownership, and the company may freely dispose of them during the continuance of the privilege granted and after the termination of said period or the resumption of the said privilege.

ARTICLE XX.

The lands mentioned in the preceding article and the lands appropriated for the railroad shall be delivered to the company as they may be requested, and agreeably to the provisions of the fifteenth, sixteenth, seventeenth, and eighteenth articles of this contract.

ARTICLE XXI

When the lands required for building the railroad for ports or any other appurtenances of the works of said road are the property of individuals, the company shall have the right to take them, by order of the governors of the respective provinces,

after valuation made and just indemnification given to the owner, in conformity with the provisions of the law of June 2d, 1848, defining the cases in which property may be taken for public use, and the forms to be observed in such cases.

ARTICLE XXII.

The delivery to the company of the vacant lands granted gratuitously to it shall be effected provisionally so soon as they may be designated by the company after proof of their character as vacant lands, a survey and an appropriation to it by the governor of the respective provinces. This provisional appropriation shall be submitted to the examination and approval of the executive power. So long as it shall not be confirmed it shall only produce the effect of preventing any subsequent grants of the lands in favor of a third person, but from the time that it has been examined and approved, in conformity with this article, it shall be equivalent to taking formal possession thereof.

ARTICLE XXIII.

The company being at liberty to vary or modify the line of the railroad if difficulties or obstacles should be found in carrying it out on the line first selected, may, in such case, change also on the portion so varied the location which it may have previously made of the vacant lands, which it can obtain gratuitously, according to the stipulations of the fifteenth article.

TITLE III.—*Rights, franchises, and exemptions.*

ARTICLE XXIV.

The Republic, in order to aid as far as possible, on its part, the enterprise of the company and to facilitate the success of its operations of all kinds, confers upon the company the rights, franchises, and exemptions mentioned in the articles following:

ARTICLE XXV.

The enterprise is deemed of public utility.

ARTICLE XXVI.

The company is authorized to propose to the executive power such regulations as it may judge proper for the police, security, use, and preservation of its ways of communication, ports, works, and establishments of all kinds; but such regulations shall not take effect without the express approval of the executive power, which even after having approved may annul or amend them if it think proper, proceeding always in conformity with the laws of the Republic.

ARTICLE XXVII.

The rates of transportation or freight of money, carriage of merchandise or travellers over the railroad, of port dues, board, and storage in its depots and establishments shall be fixed by the company, and modified as it may judge proper, making them immediately known to the local authorities in order that the public may be informed of them.

ARTICLE XXVIII.

All correspondence which may arrive from the territory of the Republic or from foreign countries to be transported over the railroad, whatever may be its destination, must absolutely pass through the post-offices of New Granada, which shall open with the company an annual account current of postage in order to compute the share of profits belonging to New Granada, in conformity with the provisions of the thirtieth article of this contract and in order to guard against fraud in this respect.

ARTICLE XXIX.

To carry out the stipulation in the preceding article the company binds itself not to receive any other packages of correspondence than those delivered to it by the post-offices of New Granada, to be carried by the railroad to their port of embarkation or to the point on the Isthmus for which they may be destined on the line of

the said road, complying with the regulations which the executive power may lay down on the subject, and also with those which may be given for the carrying on said road of the correspondence of foreign nations which may be delivered to the company by the officers of the Republic for that purpose.

ARTICLE XXX.

The executive power shall at all times determine what foreign nations may be permitted to transport their correspondence across the Isthmus of Panama by the railroad, but in all cases in which the mails of foreign nations shall be permitted to pass by the Isthmus of Panama all contracts and pecuniary agreements for their transportation by the said railroad shall be made by the company, and all the pecuniary proceeds of such contracts and agreements shall go into the funds of the company as a branch of its profits. In compensation for this privilege the company undertakes to transport by the railroad, free of charge, all the mails of New Granada; and, moreover, to pay to the government of the Republic five per cent on all sums of money which it may receive in virtue of said contracts and agreements, whether such sums proceed from contracts which the company may enter into with foreign governments or with other companies, or from the general regulations which it may establish for the carrying of the correspondence of nations which may not have entered into special contracts with it.

And it is also stipulated: First. That whatever may be the profit which the company may receive by virtue of such contracts and agreements, in no case shall it on this account pay to the Government of New Granada less than ten thousand dollars per annum; second, that this payment shall be over and above the three per cent of the net profits of the enterprise to which New Granada is entitled; and third, that the power of the company to enter into such contracts or pecuniary agreements shall not be opposed in any manner to the contracts or agreements which now exist between the Republic of New Granada and any foreign nation or nations, for the transportation of mails on the Isthmus of Panama.

ARTICLE XXXI.

The services of all kinds which the company is to perform on the railroad, during the continuance of its privilege, shall be performed exclusively by its agents, and with the materials belonging to it, unless it should choose to perform them in another way.

ARTICLE XXXII.

The company may freely introduce into the Isthmus, without paying duties or taxes of any kind, all the implements, machines, iron tools, material, and manufactured articles intended for the construction, working and preservation of the railroad, and also the articles required for the subsistence and clothing of the workmen employed in the work, during the whole period of the construction of the road, being subject in this respect to the regulations which the executive may establish.

ARTICLE XXXIII.

No taxes or contributions, national, provincial, municipal, nor of any other kind, shall be imposed upon the railroad or upon its warehouses, furniture, machines or other works, property and effects of any kind belonging to it, and which in the judgment of the executive power are necessary for the service of the said railroad or its dependencies; and in compensation it is expressly stipulated that, in every case and notwithstanding any provisions of this contract to the contrary, the troops, warlike stores, arms, clothing, and other effects of the Government of the Republic, and persons coming to it as new settlers on account of the State, shall be transported gratuitously over the railroad at the charge and cost of the company, and without the Government or such troops or colonists having to pay anything for freight or for any other cause.

ARTICLE XXXIV.

Passengers, money, merchandise, goods, and effects of all kinds which may be transported across the Isthmus, to go from one ocean to the other by the railroad, shall be exempt from taxes and imposts, national, provincial, municipal, or of any other description. The same exemption is extended to all effects and merchandise

which may remain on deposit in the ports, stores, and landings of the company, destined either for the interior or for other countries; but the merchandise or effects, destined for consumption in the interior of the Republic, shall pay the duties and imposts established, or which may be established, when such goods leave the warehouses of the company; to which end their delivery shall be conducted under the cognizance of the officers of the Republic, and in conformity with the laws and regulations laid down by the executive.

ARTICLE XXXV.

Foreigners who may form settlements on the vacant lands granted gratuitously to the company shall be exempt during the space of twenty years from the date of the formation of such settlements from all forced contributions, and from tithes and first fruits on their agricultural property and their products for home consumption; they shall be entitled to receive letters of naturalization, as soon as they solicit them, on fixing their residence in the territory of the Republic; and during the said term of twenty years from the formation of their settlements, they shall not be obliged to serve in the Army, Navy, or national guard, nor to take arms in defence of the Republic, save in case of foreign invasion.

ARTICLE XXXVI.

Travellers passing from one sea to the other over the railroad shall not require any passport to pass over it, except in cases of foreign war or internal political commotion, when the Government may deem the presentation of passports expedient for the security of the country or the preservation of public order. Nevertheless persons who have been expelled from the territory of the Republic, or other individuals whom the laws may have forbidden to enter it, shall not pass over the Isthmus.

CHAPTER SECOND.

OF THE DUTIES AND OBLIGATIONS ASSUMED BY THE COMPANY.

ARTICLE XXXVII.

The company undertakes to execute, at its own expense, risk, and peril, all the works necessary for the establishment and construction of a railroad, to open and keep up a line of communication between the two oceans across the Isthmus of Panama.

ARTICLE XXXVIII.

The said works shall, unless in case of superior force, be commenced within the period of eighteen months, which shall begin to run four months after the approval of this contract by the Congress of the Republic. Works of a definite nature, in respect to the laying out the line, indispensable to its execution, shall be regarded as the beginning of the enterprise.

ARTICLE XXXIX.

The said works shall be completed within the term of six years, counting from the expiration of four months after the approval of this contract by Congress, so that the railroad undertaken by the company shall be passable in all its parts at the expiration of the term so specified; but if after constructing and making passable one-third part of the railroad the company should find that it cannot finish it in its whole extent in the six years agreed upon in this article, it shall have the right to ask an extension of the term, which shall be granted by the executive for two years, in addition to the six years fixed for the completion of the whole railroad, without incurring thereby any of the penalties contained in this second chapter of this contract.

ARTICLE XL.

The company shall secure the fulfilment of the obligations assumed by it for the execution of the works of the enterprise, which is the subject of this contract, in the sum of one hundred and twenty thousand dollars; but it shall not be necessary for the company to deposit this sum in cash, but only to secure it by means of an instrument of double the amount, executed with all proper solemnities and to the entire satisfaction of the Government of the Republic, to answer, by virtue of such security

for the said sum of one hundred and twenty thousand dollars in case the railroad should not be completed within the time stipulated in this contract and in accordance with the provisions herein agreed upon.

ARTICLE XLI.

In case the privilege should become void in consequence of failure to begin the work, or from its not being completed in the manner and within the period prescribed therefor, the company shall forfeit in favor of the Republic the sum of one hundred and twenty thousand dollars mentioned in the preceding article.

ARTICLE XLII.

If the company should not have made its preparations for beginning its works agreeably to the thirty-eighth article, and if it should not have actually begun the same twenty-two months after this contract has been approved by Congress, it shall forfeit all the privileges and advantages which result to it therefrom; unless the agents of the Government of the Republic should not have affected the delivery of the lands necessary for the road within three months after they have been demanded by the company. In this case the term allowed by the thirty-eighth article for the commencement of the work shall be extended for a period equal to that of the delay it has sustained in the delivery of the lands after the three months from the time of their being demanded.

On no account and at no time shall the work of the railroad be suspended by reason of differences which may arise between the company and the owners of land as to the value which must be put upon such as it may be necessary to purchase for the building of the said road; but in order to give positive guaranties to such owners, and that their rights may not in any manner be prejudiced, the company shall execute a personal undertaking or mortgage, sufficient, in the judgment of the governor of Panama, to answer for the price which may be fixed for said lands, according to the law of the second of June, one thousand eight hundred and forty-eight, "of expropriation."

ARTICLE XLIII.

If at the end of the six years fixed for the completion of the railroad the company should not have completed half of the work it shall incur the penalty of the avoidance of the privilege and forfeit the sum of one hundred and twenty thousand dollars, secured by the obligation in double the amount which it is to execute as a guarantee of the fulfillment of the conditions which it assumes. The company shall incur the same penalties if at the end of the eight years the works of the railroad shall not be completed, and the said road passable throughout, in the manner and form and according to the conditions set forth in this contract.

ARTICLE XLIV.

In case of forfeiture legally declared against the company it shall be bound to return to the Government the lands granted gratuitously to it and in the same conditions in which they may be when the forfeiture is pronounced without any obligation on the part of the New Granadian Government to make to the said company, or to its assigns, any indemnification for improvements or for any other cause.

ARTICLE XLV.

After the entire completion of the work of the line of the railroad the company shall order a survey of the lands to be made at its own expense, with notice to the owners of the lands adjoining, together with a statistical plan of all the parts of the road which are to be returned with it to the Republic at the time of the expiration of the privilege. It shall also order a descriptive statement to be made, at its own expense, of the bridges, aqueducts, and other works of art which may have been constructed and which are to be returned to the Republic at the same time.

ARTICLE XLVI.

The company shall make also, at its own expense, similar descriptive statements of all the subsequent works of the same kind which it may afterwards construct during the period of its possession of the privilege.

ARTICLE XLVII.

An exact and authenticated duplicate of the statistical plan and descriptive statements above mentioned, shall be delivered by the company to the governor of Panama, or sent to the office of the secretary for foreign affairs, to be deposited in the national archives for use there, in case of need, during the continuance of the privilege, or at the time of its expiration.

ARTICLE XLVIII.

One year before the expiration of the privilege the company shall be bound to make, on notice to and after hearing the agents of the Republic commissioned for the purpose, valuations, statements, and inventories of the immovable property, bridges, aqueducts, and other works of art which are to be returned to the Republic, agreeably to the descriptive statements and statistical plan, of which the duplicates shall have been deposited in the archives of the administration of New Granada.

ARTICLE XLIX.

At the expiration of the term of the privilege, and by the mere fact of its expiration, or in case of the resumption of the privilege, as provided in the second article of this contract, and by the mere fact of the resumption, the Government of New Granada shall be substituted in all the rights of the company, in the ownership of the lands and of the works of art, designated in the statistical plan and in the inventories and descriptive statements above mentioned, and shall enter immediately into the enjoyment of the line of communication, of all its appurtenances and dependencies, and of all profits accruing therefrom. The company shall be bound to deliver to the Government in good condition, the roads, the works which compose them, and their appurtenances, such as the places for lighterage, for discharging cargo, guardhouses for the inspectors, offices for the collection of freight and carriage, machines, fixed or movable, and, in general, all objects movable and immovable, whether destined specially for the service of transportation or applicable to any other object connected with the enterprise, and whether included or omitted in the said plans, inventories, statements, and statistical tables.

ARTICLE L.

In conformity with what is already specified it is hereby expressly stipulated that when, at any time or for any cause whatever, the privilege of the company shall terminate or expire, the Government of the Republic shall enter immediately and gratuitously into the enjoyment, ownership, and possession of all the objects which form the subject of articles forty-eight and forty-nine preceding the present; and consequently the said Government shall enter likewise immediately and gratuitously into the enjoyment, ownership, and possession of the railroad in its whole extent, from one ocean to the other, and of the places for lighterage, wagon roads, lateral and cross, places for loading and unloading, storehouses, stations, guardhouses for the police, offices for the collection of freight and carriage, machines, fixed or movable, and, in general, of all the works, effects, utensils, and things of every kind which, in the judgment of the executive power, may be necessary for the use of the road and its dependencies, such as locomotives, cars and carriages of every description, materials and furniture of every kind, and, in fine, any other things, movable and immovable, which may be applicable to the service of the railroad and of the other roads, works, and establishments dependent upon it, or in any manner connected with the enterprise, or belonging to it, although not expressly mentioned in this article, nor in those preceding; it being well understood that all these things, movable and immovable, shall pass, as it has been mentioned, into the enjoyment, ownership, and possession of the Government of the Republic without its being obliged to pay anything to the company by way of indemnification, or for any other cause.

ARTICLE LI.

In consideration of the collection and receipt of the duties and rates of transportation fixed by it, the company binds itself always to effect with care, punctuality and celerity, and without exception as to national character, the transportation of travellers, cattle, merchandise, goods, and materials of all kinds which may be confided to it, all of which shall be transported without any deduction from the established prices, except such as it may allow in favor of nations which are now bound, or which may hereafter

become bound, by means of public treaties entered into with New Granada, to guaranty positively and effectually to this Republic its rights of sovereignty and ownership over the territory of the Isthmus of Panama, and the perfect neutrality of said Isthmus, to the end that the free transit from one sea to the other may never be interrupted or embarrassed; but notice is expressly given, and in fact it is hereby especially stipulated, that New Granada, Granadians, and their property shall enjoy all the benefits and advantages which any other nation whatever may obtain by virtue of the provision in this article.

ARTICLE LII.

Whatever may be the line selected by the company for building the railroad between the two oceans, one of its extremities shall be the city of Panama.

ARTICLE LIII.

Vessels of nations at war with New Granada shall not be admitted into the ports at either extremity of the railroad, nor shall the productions, effects, and property of such nations have free transit across the Isthmus on said road.

ARTICLE LIV.

The expenses of surveying and laying off the lands granted to the company, the cost of the statistical plan, inventories, and descriptive statements mentioned in this contract, as well as the expenses and cost of the titles of ownership to be given by the authorities or notaries of the Republic, shall be borne by the said company; but all documents, of whatever nature, drawn up in the execution of this contract, shall be registered without cost.

ARTICLE LV.

The company binds itself to pay annually to the Government of New Granada three per cent of the net profits of the enterprise, in the same proportion in which they are to be distributed in form of dividends to the shareholders, without taking into account in the payment of the said three per cent any deduction for the supposed interest of the capital of the company, or for any sum which the shareholders may designate as a reserve or sinking fund. It is stipulated that for the receipt of this duty the Government of New Granada shall look, with the shareholders of the enterprise, to the accounts produced and liquidated at the general meeting of the company, which accounts the agent of the Republic may examine, and in respect to them he may make observations in the same manner as any shareholder, but without power of interfering in the general management of the company. Besides what is stipulated in this article, it is also agreed that the payment of the said duty of three per cent shall be made at Bogota, Panama, or New York, as the Government of the Republic may direct.

ARTICLE LVI.

The company selects New York as its domicile, and will maintain in Panama a representative with power sufficient to act in its name in all cases where it may be necessary.

ARTICLE LVII.

The present privilege can not be granted or assigned to any foreign government—that is, to any government out of the New Granadian territory—under penalty of forfeiture of the privilege, by the mere fact of attempting or carrying into effect such grant or assignment; and, although it should at any time be attempted or carried into effect, it will be, and from this time is, declared absolutely null, and of no force or effect.

ARTICLE LVIII.

Wherever in this contract mention is made of the completion, expiration, or termination of the privilege granted by it, all that is said in reference to such completion, expiration, or termination shall be understood as said and applicable also to the case of the resumption of the said privilege. Consequently, it is expressly stipulated, that at any time when the said privilege may be resumed, according to the second article of this contract, the Panama Railroad Company shall fulfil all the duties incumbent upon it, in the same terms as if the forty-nine years, which the privilege at the

utmost, may extend, had expired; and it is also expressly stipulated that for the sum which may be paid as indemnification to the Panama Railroad Company, in any of the three cases set forth in the article last mentioned, the Government of New Granada shall acquire not only the rights, but also all the material objects, which the company is bound to deliver to it on the expiration of the privilege, which delivery shall be made as may be established by general regulation, on the same terms on which it should take place, if the forty-nine years which the privilege at the utmost may continue had expired.

ARTICLE LIX.

Controversies which may arise between the executive power of New Granada and the Panama Railroad Company, in regard to the fulfilment or failure in fulfilment of this contract, or upon the understanding or construction of the clauses it contains, shall be determined by the magistrates and according to the laws of the Republic of New Granada. In no case shall any privilege, immunity, or exemption be alleged which is not expressly recognized or granted in this contract; nor will the intervention of any authority or functionary other than those legally established with jurisdiction in the Republic be allowed. Such controversies as may affect the existence, preservation, or permanency of the privilege and of the rights thereunto appertaining shall be decided by arbitration.

ARTICLE LX.

The Government of the Republic binds itself to protect and maintain, fully and entirely, the rights of the company under this contract; and to this end it agrees, that where doubts occur in the construction of any clause or clauses inserted in the preceding articles, which secure to the company any inducements or advantages, if such doubts should occur in consequence of such clauses not being sufficiently explicit, they shall be interpreted in the natural signification most favorable to the company.

ARTICLE LXI.

All the legislative acts, decrees, and agreements by which, in former years, various privileges were granted for the opening of an intermarine communication by the Isthmus of Panama are irrevocably annulled. Consequently, the "Panama Railroad Company" has the sole right and duty of constructing a railroad from one ocean to the other by the said Isthmus, in conformity with the stipulations of this contract, which is the only one remaining in force on the subject between the Government of the Republic and said company; since by this clause not only all the acts, decrees, and agreements above mentioned, but especially all the contracts and stipulations, which formerly existed between the said Government and the said company, or the individuals, of whose rights it is the assignee, are annulled.

ARTICLE LXII.

This contract, as divided into two chapters and extending to sixty-two articles, shall be submitted for approval to the executive power of the Republic, and that being obtained, shall be presented by it to Congress; the consent and approval of which are required, in order that, receiving the force of a law, it may be carried into effect.^a

The railroad enterprise, being of public utility, the authorities shall afford it all possible protection in conformity with the laws.

[Translation of Article V, of Law No. 33 of 1890, as published in the "Gaceta de Panama" No. 416 of Dec. 10th, 1890.]

ARTICLE V.

From the month of January, 1891, the Department of Panama will continue to receive directly from the Panama Railroad Company the sum of twenty-five thousand dollars (\$25,000) in American gold, assigned to it by law 46 of 1867, by which a contract was approved. The Government will give opportune notice to the Panama Railroad Company in order that the dispositions made by this article may be carried out on the date expressed in same.

^a NOTE.—Congress approved June 4, 1850.

SUBCOMMITTEE OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Monday, February 27, 1905.

Subcommittee called to order at 10.55 a. m.

Present, Hon. D. W. Shackelford, chairman, Hon. Charles E. Townsend, Hon. William C. Lovering, and Hon. John J. Esch.

STATEMENT OF MR. EDWARD A. DRAKE, VICE-PRESIDENT AND SECRETARY OF THE PANAMA RAILROAD COMPANY (CONTINUED), ACCOMPANIED BY MR. ALFRED ANDERSON, ASSISTANT PURCHASING AGENT OF THE PANAMA CANAL COMMISSION.

Mr. TOWNSEND. Mr. Drake, we have only a few questions to ask this morning, and there will hardly be time to go into minute detail with regard to these things. Please shorten your answers as much as possible, and make them as concise as possible and we will determine from them whether we want to go more extensively into the subject-matter or not. You have been sworn, Mr. Drake, I believe?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Mr. Drake, has the Panama Railroad Company at any time made any purchases for the Isthmian Canal Commission?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. About when did those purchases begin?

Mr. DRAKE. Early in May, 1904.

Mr. TOWNSEND. How did you happen to make purchases for the Commission?

Mr. DRAKE. It happened shortly after the property was transferred to the United States. General Davis was on the Isthmus, and Major Brooke, I think, was there also, to take possession. They required certain supplies, for which they made requisition on the chairman of the Isthmian Canal Commission. The chairman had recently been elected a director of the Panama Railroad Company, and was at the office; and using the general idea that the Panama Railroad Company was about to become a part of the Government property, thought that he should accordingly, without any impropriety, avail himself of its facilities—

Mr. TOWNSEND. This was after the purchase of the stock?

Mr. DRAKE. Yes; but before its actual delivery—avail himself by agreement of the facilities of the Panama Railroad Company for making such purchases of material as were immediately required.

Mr. TOWNSEND. That was called "emergency material?"

Mr. DRAKE. At that time the material was not; it was spoken of as "material;" General Davis spoke of the material as urgently required; and as our machinery was in full operation it was thought proper to avail themselves of it.

Mr. TOWNSEND. You received your instructions from Admiral Walker?

Mr. DRAKE. From Admiral Walker.

Mr. TOWNSEND. How long did you continue to purchase for the Isthmian Canal Commission?

Mr. DRAKE. About six months.

Mr. ESCH. Let me fix the date more clearly in my mind. When was this done with reference to instructions given to the Commissioners by the President, the date of that being May 9?

Mr. DRAKE. About that time. The first letter that I received from the chairman of the Commission—I think it is there, Mr. Townsend.

Mr. TOWNSEND. Here is a letter dated "Evening Star Building, May 2, 1904," from J. G. Walker chairman of the Commission to you, asking that you should give him some information in regard to wire-gauze screening. Was that a correct date?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. And you continued to make those purchases for about six months?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Now, were any of those purchases made before the opening of the bids?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Were all of them?

Mr. DRAKE. All? No, sir. We were requested to buy the material for the Commission in our own way as we were making our own purchases. Those purchases are submitted to competitive bids when there is an opportunity. We have been buying all classes of material for a great many years, and we have regular recognized parties that we know that we can get the goods from that we require at prices that are regular. In emergency cases they were thus not submitted to competitive bids.

Mr. TOWNSEND. Can you tell what proportion of those purchases were made through competitive bids?

Mr. DRAKE. A very large proportion, sir.

Mr. TOWNSEND. Can you tell how much in all were purchased?

Mr. DRAKE. I would like to make one distinction. There was a part of the material at the outset that was bought in the name of the Panama Railroad Company for account of the Commission; that the railroad company paid for and collected from the Commission afterwards—miscellaneous material. Subsequent to that our purchasing department was used, but the bills were sent promptly through our accounting office to the Commission.

Mr. TOWNSEND. Did you have personal charge?

Mr. DRAKE. I did not.

Mr. TOWNSEND. Who did?

Mr. DRAKE. Mr. Alfred Anderson, our purchasing agent. The requisitions were received by me and referred to him.

Mr. TOWNSEND. Were the requisitions made upon you?

Mr. DRAKE. Always upon the Panama Railroad, addressed to me as vice-president.

Mr. TOWNSEND. And you turned them over to Mr. Anderson to comply with your request?

Mr. DRAKE. The requisitions will show my note: "Acknowledge receipt and comply."

Mr. TOWNSEND. Were any of those purchases for lumber?

Mr. DRAKE. Yes, sir; a large proportion.

Mr. TOWNSEND. About what proportion of it?

Mr. DRAKE. About \$80,000 worth, I think—

Mr. ANDERSON. \$75,000 or \$80,000 worth.

Mr. DRAKE. Together with the freight charges made the lumber cost about \$115,000 delivered at Colon.

Mr. TOWNSEND. Some of those were ties?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. And those were to be used on the sidings on which they were transporting dirt?

Mr. DRAKE. Making temporary tracks.

Mr. TOWNSEND. And were not a part of the railroad?

Mr. DRAKE. Not at all, sir.

Mr. TOWNSEND. And they belonged to——

Mr. DRAKE. Absolutely for use by the chief engineer of the Commission building temporary tracks. Sidings would imply part of the main track. These were for temporary tracks.

Mr. TOWNSEND. Was this lumber largely paid for originally out of the funds of the railroad company?

Mr. DRAKE. No, sir. The requisitions for lumber came, and we had proceeded on the original plan of buying as we would buy for ourselves, on our specifications, but payment to be made by the Commission.

Mr. TOWNSEND. Did you ever receive any instructions from the Commission to buy of particular dealers?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. None at all?

Mr. DRAKE. You are speaking of lumber particularly?

Mr. TOWNSEND. Yes.

Mr. DRAKE. No, sir. A great many names were sent to us—a great many people made applications to us at the suggestion of members of the Commission.

Mr. TOWNSEND. What members of the Commission made any suggestions as to purchases of lumber?

Mr. DRAKE. None, as to purchases; suggested to concerns to make application to us to be put on the list.

Mr. TOWNSEND. Who made those suggestions?

Mr. DRAKE. Mr. Harrod, Mr. Hecker, I think, and Mr. Grunsky.

Mr. TOWNSEND. Mr. Grunsky, of California?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Did you purchase any lumber from California parties?

Mr. DRAKE. We had bids from California parties, and had not accepted any until the matter was taken out of our hands by Mr. Grunsky, and the orders were placed directly.

Mr. TOWNSEND. Why did you not purchase any?

Mr. DRAKE. We did not have the facilities for taking delivery of large quantities of lumber at Panama. We thought it could be more easily and cheaply delivered at Colon. We were not satisfied that the material we could get there would meet the requirements. Mr. Grunsky, from his knowledge, determined all of that later.

Mr. TOWNSEND. You had the same facilities that they had?

Mr. DRAKE. We were not as familiar with these.

Mr. TOWNSEND. You were not satisfied that you could get the lumber as cheaply from the California parties as from others?

Mr. DRAKE. Some of the quotations were lower than Southern bids; our specifications were rigid. There are peculiar requirements for lumber on the Isthmus. It is very susceptible of decay, and destruc-

tion by the toredo. Our instructions to our purchasing agent were always to limit the area in which he bought his material.

Mr. TOWNSEND. You had a greater knowledge of the character of the material, and the material necessary for the Isthmus, than they had.

Mr. DRAKE. We felt that we did.

Mr. TOWNSEND. Who drew the specifications for the purchase of lumber?

Mr. DRAKE. Our specifications were used at first, but rejected later.

Mr. TOWNSEND. Who rejected it?

Mr. DRAKE. We submitted our specifications to the chairman of the Commission and the chief engineer of the Commission, and they were accepted. Later Chief Engineer Wallace arrived on the Isthmus. After studying the situation telegraphed that a different specification prepared by him be adopted, to do which required the rejection of all bids received by us up to that time for lumber and its transportation, which was accordingly done. It was a very much more rigid and extreme requirement than ours, which was based on ten or twenty years' experience, and very much enhanced the cost of the material.

Mr. TOWNSEND. Did you answer my question as to who drew the specifications?

Mr. DRAKE. The specifications were drawn by the chief engineer of the Commission, and were those of the Illinois Central Company.

Mr. ANDERSON. We did not buy any lumber, but only asked bids on those specifications.

Mr. DRAKE. Yes.

Mr. LOVERING. But the actual purchase and contract was made by Mr. Grunsky, was it not?

Mr. ANDERSON. Not for the lumber to which Mr. Drake refers.

Mr. DRAKE. I know how it had been bought by us. We bought two millions of feet directly.

Mr. TOWNSEND. Was this lumber shipped in the boats belonging to the Panama Railroad Company?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Was any of it shipped over lines traversed by your boats?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Where was the lumber shipped from largely?

Mr. DRAKE. New Orleans; some little from Mobile. We had connections there.

Mr. TOWNSEND. Were any materials shipped from New York to the Isthmus used by the Canal Commission that were not carried in your boats—the railroad boats?

Mr. DRAKE. No, sir; not that I recall.

Mr. TOWNSEND. Were you asked for rates on that material?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Did you make rates?

Mr. DRAKE. We made a rate "for quantity" to the Commission, anticipating that large quantities of material would go forward by our boats. That rate was the same as that fixed for the company's own material, of \$5 a ton, as against our tariff rate of \$8 a ton.

Mr. ESCH. How does that compare with other rates?

Mr. DRAKE. The open rate is \$8 per ton.

Mr. ESCH. And you gave \$5?

Mr. DRAKE. Yes; so that it might not be higher than any other competitive rate by independent steamship lines.

Mr. TOWNSEND. The Commission reimbursed the railroad company for the money expended by the railroad company in the purchase of material?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. How did they do that?

Mr. DRAKE. By drafts, Treasury warrants, for collection vouchers.

Mr. TOWNSEND. Payable to the treasurer of the company?

Mr. DRAKE. Payable to the Panama Railroad Company. That was for \$18,366.91 for material.

Mr. TOWNSEND. About \$67,000 worth purchased directly in the name of the Commission by you—I think Mr. Anderson said about \$75,000, all told.

Mr. DRAKE. That is the lumber. We bought, with freight added, \$215,000 worth, all told, of material for the Commission, of which we paid for about \$18,000.

Mr. TOWNSEND. Did you receive any written instructions, aside from letters, as to the purchase of these materials?

Mr. DRAKE. No, sir. Only the requisitions themselves in detail. They are all on file here.

Mr. TOWNSEND. I will ask you again, in that connection, did you make any of those purchases on the individual order of any member of the Commission?

Mr. DRAKE. No, sir. At the time that the requisitions were received for plumbing material, and for rock-drilling material, members of the Commission were in the office more or less, and were consulted. They had, as you will see by the letters on file—the chairman of the Commission had—employed certain subengineers who were going down to Colon, and he gave them limited authority to order some additional parts for different kinds of machinery that had been called for; and at that time members of the Commission were in and out of the office, and were consulted concerning that particular material, and expressed their views directly to Mr. Anderson, not to me.

Mr. TOWNSEND. Most of them were made on letters received from the chairman of the Commission?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Can you tell me what proportion of those were purchased on competitive bids?

Mr. DRAKE. No, sir; I can not.

Mr. TOWNSEND. Were you informed that the instructions of the President were to the effect that they were to be purchased on bids after advertising?

Mr. DRAKE. I knew that requirement was applied to the Canal Commission by the President's letter, but they did not so restrict the railroad, and it did not apply to us. I should say, in explanation of that, when at first the question of the railroad company purchasing material for the canal came up I was, of course, careful to see that in complying we were within our rights as to a private corporation. The railroad is not now buying any material for the Commission. The railroad company bought the material, as it did its own material, without advertising.

Mr. TOWNSEND. Did you receive instructions from the board of directors of the Panama Railroad Company to the effect that you should make these purchases for the Commission?

Mr. DRAKE. No, sir. I submitted to them a report, or statement, that I had been requested to make these purchases for the Commission, and took their advice as to the propriety.

Mr. TOWNSEND. They took no action on it?

Mr. DRAKE. No, sir; no formal action.

Mr. TOWNSEND. Did you object to making these purchases for the Commission?

Mr. DRAKE. Not the slightest; I felt that we were facilitating their work in doing it.

Mr. TOWNSEND. Can you tell us of whom you purchased lumber for the Commission?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Whom?

Mr. DRAKE. We bought pine lumber from Spottiswood, Turner & Co., of Mobile, Ala., and of the Cook, Day Lumber Company, of New Orleans; we bought cypress lumber from F. B. Williams, of Patterson, La., and we bought creosoted lumber of the Southern Creosoting Lumber Company, and one other place, I don't recall, in New Orleans. That was after bids had been invited from a large number of mills both here and there, and after I had sent Mr. Anderson from here to New Orleans to remain there for a week or ten days to get in touch with the situation as to the purchase and delivery to us of the material and to arrange forwarding of it to the Isthmus.

Mr. TOWNSEND. How did you advertise for bids?

Mr. DRAKE. Did not advertise for bids.

Mr. TOWNSEND. I thought you said "after advertising."

Mr. DRAKE. Oh, no; I did not say advertising.

Mr. TOWNSEND. How did you invite them?

Mr. DRAKE. We invited them as we do in the railroad company—I should have to refer to the files to see how many. We invited bids from a large number of concerns, from fifty to seventy-five.

Mr. TOWNSEND. What proportion of those were suggested to you by the Commission?

Mr. DRAKE. Not any of them were suggested to us directly by the Commission. I think a large number of concerns addressed us saying that they had been advised to address us by different members of the Commission, to ask opportunity for bidding on the lumber.

Mr. TOWNSEND. Can you tell whether any purchases were made from any one excepting those that had been referred to you by the Commission?

Mr. DRAKE. I don't think that any people that we bought lumber of were referred to us by the Commission.

Mr. TOWNSEND. Did you buy any of D. O. Mills & Co.?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Don't they sell lumber or materials?

Mr. DRAKE. I have understood that large orders were placed with a Puget Sound concern of which Mr. Mills is a director. We had nothing to do with that in our office. That is California material. We did not place any of those orders. I believe orders for from 2,000,000 to 5,000,000 feet of lumber had been placed with a Puget Sound concern.

Mr. LOVERING. That was later?

Mr. DRAKE. Yes, sir.

Mr. LOVERING. When did your purchases cease?

Mr. DRAKE. About October 1 last, but some that we bought up to that time is going forward still.

Mr. TOWNSEND. Was the company of which D. O. Mills is a director suggested by Mr. Grunsky?

Mr. DRAKE. Not to us; we had nothing to do with that.

Mr. TOWNSEND. Did you have any talk with Mr. Grunsky as to the purchases of material from the D. O. Mills Company?

Mr. DRAKE. No, sir; I had a talk with Mr. Grunsky as to the relative merits of California lumber as compared with the lumber bought in the South, and he expressed the opinion that it was a thoroughly suitable material and much cheaper. Of course I was skeptical about that, but I believe that events have proved he was correct as to the first cost, but delivery is yet to be made at Ancon.

Mr. TOWNSEND. Were there specifications for the purchase of lumber?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Who prepared them?

Mr. DRAKE. We did not. I understand they were the specifications of the Commission.

Mr. TOWNSEND. Now, when you wrote to these different firms notifying them that you were going to purchase an amount of lumber, did you state that they were to be let through competitive bids?

Mr. DRAKE. We invited figures on lumber according to our list of quantity and specifications.

Mr. TOWNSEND. Have you one of those letters to any company of which you purchased?

Mr. DRAKE. Yes; there is one [handing letter to Mr. Townsend].

Mr. TOWNSEND. That is similar to the letters that were sent to all of them, I suppose?

Mr. DRAKE. Yes.

Mr. TOWNSEND. We will mark that Exhibit No. 1.

EXHIBIT No. 1.

DEAR SIR: Please quote prices f. o. b., various points, and c. i. f. Colon, Republic of Panama, at which you will furnish material enumerated in attached schedule, which is required for use by the Isthmian Canal Commission, all to be in accordance with our standard specification, copy of which is also inclosed.

If the capacity of your mills will not permit of making deliveries as promptly as our requirements demand, we may, because of the urgency of our needs, conclude to secure a portion of the above material from various parties, in order that delivery of the entire lot may be expedited; and I shall be glad, therefore, to have your bid specify time of delivery of entire amount, and also date at which you will agree to deliver one-fifth of the total quantity required, the reduction to be proportionate on all items of the schedule.

Inspection of material will be made at point of loading aboard ship by inspectors delegated by this company, and payment therefor be made as follows:

If purchased f. o. b., payment will be made upon receipt of inspector's tally and bill of lading, showing delivery to carrier.

If purchased c. i. f., payment will be made upon receipt of advice from the Isthmian Canal officials at the Isthmus showing delivery at destination.

Please note that in quoting prices c. i. f. arrangement must be made for forwarding of material by carriers of draft not to exceed 15 feet, deep loaded.

Bids must state earliest date of delivery at loading point, and be received at this office not later than September 6, 1904, after which date no quotations will be considered.

Yours, truly,

Purchasing Agent.

Mr. ESCH. Were those your own specifications?

Mr. DRAKE. Up to a certain time; but later the specifications were changed, as I have testified, by the chief engineer of the Commission. One of the changes was that he required cypress timber to be creosoted, which we had never done, and required that pitch-pine lumber should be "all heart" and without any knots or any other defects.

Mr. ESCH. These different requirements were put in the circular letter?

Mr. DRAKE. No, sir.

Mr. ESCH. They were not?

Mr. DRAKE. No.

Mr. TOWNSEND. You refer here in this Exhibit No. 1 to a copy of your standard specification. Have you that?

Mr. DRAKE. I think I have.

Mr. TOWNSEND. While you are looking for that will you tell me why you did not give a public notice to the country at large, to dealers at large, in lumber and supplies?

Mr. DRAKE. We did invite bids from, I believe, eighty-seven concerns, but it had never been our practice to advertise in the public press. The railroad company purchases its supply semiperiodically, and invites bids semiannually from concerns that are known to be capable of furnishing it, and that are of approved capacity and means, and thereafter accepts the lowest bids under those conditions.

Mr. TOWNSEND. But this was to be an extensive purchase by the Commission, was it not? You say now it is still continuing.

Mr. DRAKE. No; not now.

Mr. TOWNSEND. I understood you so to say.

Mr. DRAKE. I meant the shipments were still going forward. The purchases that were made during that period have not all reached the Isthmus yet.

Mr. TOWNSEND. What proportion have reached the Isthmus?

Mr. DRAKE. More than three-quarters of it, sir.

Mr. TOWNSEND. Is there any special hurry about that being sent on?

Mr. DRAKE. There was apparently great urgency from the Isthmus for the shipment of what seemed to us an extraordinary amount of material, and we made extraordinary efforts to comply.

Mr. TOWNSEND. Do you still believe that it was an extraordinary amount?

Mr. DRAKE. Yes; but I am not as convinced of the urgency now as then.

Mr. TOWNSEND. Isn't it a fact that a large proportion of that material has not been used, and is not ready to be used at present?

Mr. DRAKE. I believe it to be the fact that much of it has not been used yet.

Mr. TOWNSEND. Has there been any extensive use of lumber to your knowledge since you commenced those purchases at the Isthmus?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. For what purpose?

Mr. DRAKE. For the construction of foundations, roadways, and buildings.

Mr. TOWNSEND. Foundations for what?

Mr. DRAKE. For buildings, for piling, and docks. They have erected a relatively large lumber dock at Christobal.

Mr. TOWNSEND. For the purpose of landing these materials?

Mr. DRAKE. Yes.

Mr. TOWNSEND. I mean now in the construction of the canal?

Mr. DRAKE. In the construction of the canal. A large proportion of the lumber consisted of ties for temporary tracks all alongside of one line of the road. There was a pressing demand for them.

Mr. TOWNSEND. Have they constructed a large amount of track along the road?

Mr. DRAKE. I don't know.

Mr. TOWNSEND. What I was trying to get at, Mr. Drake, was whether there had been an extensive use of material which you have shipped down there?

Mr. DRAKE. For a long time after it arrived there was a congestion of lumber at our terminal. Since then it has been distributed. What use has since been made of it I can not tell, as that would be canal business, and I have all I can do in attending to the railroad.

Mr. ESCH. You say "congested" at the Colon terminal?

Mr. DRAKE. Because it was discharged so much more rapidly than our facilities for distribution—

Mr. ESCH. You say it was not distributed until some time later. Were there any wharfage charges on it?

Mr. DRAKE. We have a transportation contract with the Canal Commission that is a survival of the contract that used to exist between the railroad and the French Canal Company. It is continued on a 50 per cent reduction from the price named in the contract. In that contract there was a provision for handling, switching, and hauling all material discharged for the canal at our terminals. The ships had to discharge themselves at our wharves, and our charge for handling began from that moment, whether discharged on our cars or forwarded on the line of the road, and the charges would be proportionate to the services rendered.

Mr. ESCH. There was some additional expense because of delay in distribution after it got down there?

Mr. DRAKE. No, sir; once discharged it would be on our terminal, and we would urge them to move it as quickly as possible, because congestion on any of our wharves would hamper our business. In regard to pay for our service in the rehandling and loading and delivery, I may answer that generally, by saying that we have attempted for a great many years to charge demurrage for our cars, but neither our co-carriers nor our traffic would stand it. We have had to use our cars for storage cars everywhere. That is the great disability of the road to-day, and it is a fact that sometimes from five to seven hundred cars are used at one time in the storage of material. This lumber was discharged on the ground.

Mr. TOWNSEND. Has the Commission been to any expense, to your knowledge, for demurrage and rehandling of material?

Mr. DRAKE. In all the transportation arrangements that we made, we escaped agreeing to make allowances for demurrage. If the carrying company had been shrewder they might have exacted it, but as a matter of fact we entered into no obligations to pay; demurrage has been claimed, but none paid.

Mr. TOWNSEND. Is the claim still pending?

Mr. DRAKE. The charge was.

Mr. TOWNSEND. Do you know how much it is?

Mr. DRAKE. No; the principle was not accepted—when we made the contract we did not make any arrangement for demurrage, and if any claim is made it is without any basis so far as the railroad is concerned. The United Fruit Company has carried most of the lumber to the Isthmus. They were anxious to get the business, and expected to take the business to either Christobal or Colon, but because of lack of depth they did not go to Christobal, but to our wharves in Colon. Their vessels followed one another so rapidly that there were delays of from three to ten days in getting discharged. There was very serious complaint made about that, and it took the shape of a claim against us, which of course we rejected.

Mr. TOWNSEND. When you say “we” you mean the railroad company?

Mr. DRAKE. Yes, sir; because the railroad made the engagement for account of the Commission. The United Fruit Company came back at us because of the delay of their vessels. The terminals were ours.

Mr. TOWNSEND. Do you know whether or not they have made any charge against the Commission?

Mr. DRAKE. I do not.

Mr. TOWNSEND. Is there any delay at the port of shipment on the Gulf?

Mr. DRAKE. There was some delay in one or two cases in getting small lots forward, but when the lumber began to go it was moved with good dispatch.

Mr. TOWNSEND. Can you tell how much expense was incurred by you as the agent of the Commission by reason of those delays at ports of shipment?

Mr. DRAKE. No, sir; I am not aware of any, but Mr. Anderson can answer that. I will say that I know there were one or two cases where there were complaints of bad car loading, and of assigning to one ship more than its capacity. In one case a small lot was left over, and in another case there was complaint that ties had been loaded in box cars so that they were awkward to handle, and that there was delay on that account; but as to cost to us, if any, I will have to refer to Mr. Anderson.

Mr. TOWNSEND. Did the Commission, or any member of the Commission, tell you that you should advertise for these purchases?

Mr. DRAKE. Not until we had been purchasing for six months, and then we were told that thereafter all invitations to bid would have to be advertised.

Mr. TOWNSEND. Why did they tell you to make that change—what reason did they give you?

Mr. DRAKE. Because a question had been raised that all of the supplies we were buying were not urgency supplies. The Chairman of the Commission called my attention to a provision in the law that allowed the Commission to purchase emergency or urgency supplies without advertising.

Mr. TOWNSEND. From your own experience you do not believe any considerable number of those supplies purchased without advertisement were emergency in the sense that they were immediately needed?

Mr. DRAKE. A great many of them were explosives; we bought \$20,000 worth of explosives—

Mr. TOWNSEND. I am talking about lumber.

Mr. DRAKE. The chief engineer wrote saying that he was in great need of lumber there, and wanted us to hurry, complaining that there was delay in getting it forward.

Mr. TOWNSEND. Can you find one of those letters?

Mr. DRAKE. He wrote them to the Commission.

Mr. TOWNSEND. Did the Commission write you to that effect?

Mr. DRAKE. Communicated them to us, sir.

Mr. TOWNSEND. Can you find that?

Mr. LOVERING. During the time of your making these purchases were you beset, importuned, by contractors?

Mr. DRAKE. Oh, yes, sir; quite a number of people came to us, asking to be put on the mailing list; there were large numbers of such letters received.

Mr. LOVERING. What answer did you make?

Mr. DRAKE. Acknowledged receipt of them and added their names to our list to invite bids from.

Mr. TOWNSEND. In every case?

Mr. DRAKE. They were not acknowledged in every case, but according to their location and the possibility of their meeting the requirements. We would have letters from St. Louis, Chicago, and Omaha, and other interior points, asking to bid on supplies that we undoubtedly could buy here just as well and get delivery more speedily.

Mr. LOVERING. Did you afterwards hear from them demurring at your action?

Mr. DRAKE. No, sir; but I recall that there were complaints from people saying that they had not heard from us, coming in the form of an ordinary commercial letter, and saying that, and would like to hear later.

Mr. LOVERING. Were such applications numerous?

Mr. DRAKE. I should say they were.

Mr. TOWNSEND. So there were firms dealing in these materials who were not written to?

Mr. DRAKE. Oh, yes, undoubtedly. Here is a letter dated July 25—and I would like to say that all letters are originals, and I can give you copies of any of them, but I do not care to release any of them excepting for purposes of investigation. On July 25, 1904, I received this letter [reads]:

ISTHMIAN CANAL COMMISSION,
Washington, D. C., July 25, 1904.

[Rear Admiral John G. Walker, U. S. Navy, chairman; Maj. Gen. George W. Davis, U. S. Army; William Barclay Parsons, C. E.; William H. Burr, C. E.; Benjamin M. Harrod, C. E.; C. Ewald Grunsky C. E.; Mr. Frank J. Hecker; Mr. D. I. Murphy, secretary.]

To Mr. E. A. DRAKE,

Second Vice-President Panama Railroad Company,
24 State street, New York.

DEAR SIR: We are in receipt this morning of a cable from General Davis, requesting that the shipment of lumber, especially ties, be hurried as much as possible. There seems to be immediate need for this lumber and I would request that you do everything you can to expedite the shipment of our order given June 13, endeavoring at the same time to keep prices at as low a level as possible.

This same cable also requests 20,000 additional ties, 200 kegs of spikes and 8,000 bolts, a requisition for which I am sending in this same mail.

Respectfully,

J. G. WALKER,
Chairman of Commission.

Mr. DRAKE. And there is also a note on the margin of the letter which I will also read [reads]:

As arranged with Admiral Walker, get a load of "all heart" off at once, if possible, by sail; if possible, send smaller lots by steam and the bulk remaining as rapidly as can be contracted. D.

Mr. TOWNSEND. Now I understood your answer to my question as to why you did not advertise that the reason was because you knew the firm that could, with facility, furnish these supplies, and therefore you wrote directly to them instead of making public advertisements?

Mr. DRAKE. My answer is, that it was not the practice of the railroad company, and it has not been the practice of the railroad company, to advertise. It invites bids from a greater or less number of concerns of recognized standing in the business with whom it is acquainted or knows of, and the bids are tabulated and the order placed to the best advantage.

Mr. TOWNSEND. But after six months you did advertise?

Mr. DRAKE. No, sir, we never did advertise.

Mr. TOWNSEND. They did?

Mr. DRAKE. I don't know. We were advised, on a certain date which I can not fix definitely, that they would probably discontinue using our purchasing department because all bids must be advertised; and I then, anticipating that some further purchases might be made through the railroad, immediately made an arrangement with an advertising agency, the Alfred Frank Company of New York, to advertise in the usual way all bids that we might be called upon to advertise. But we never did anything. The Alfred Frank Company, which was the railroad company's advertising agency, is of recognized prominence and capital; I put them in communication with the Commission in order to undertake advertising both in Washington and in New York, if required.

Mr. TOWNSEND. Has the Commission employed them?

Mr. DRAKE. I think they have not, but I do not know, sir.

Mr. TOWNSEND. Do you know of any firm they have employed?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Do you know of any advertisements they have made?

Mr. DRAKE. I have not seen any.

Mr. ESCH. In that connection, when we were at New Orleans I saw a notice, I think in the New Orleans Picayune, for shovels, picks, and scythes, and other hardware; I noticed that.

Mr. TOWNSEND. You think there were about 80 lumber dealers?

Mr. DRAKE. Yes, sir. Mr. Anderson reported that a list of 87 names had been selected from a very much larger list.

Mr. TOWNSEND. Who selected them?

Mr. DRAKE. Mr. Anderson and myself. Mr. Anderson did the work and I approved what he had done.

Mr. ESCH. Were any of them located in the North Central States?

Mr. DRAKE. I think not, sir. We would hardly write to the North Central States because of the additional transportation from that point to the seaboard.

Mr. TOWNSEND. You were not bound to accept any bid that was not satisfactory?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. So if the bid had been higher you would not have been obliged to accept it?

Mr. DRAKE. No; but we do our business on the basis of economy and expediency. The lumber that the railroad has required has been purchased in definite sections. The southern pine we always bought in South Carolina, Georgia, Mississippi, and the eastern Louisiana district, and in northern Florida, restricting to that section because of the character of lumber found there. It was cheaper in the end. When we had made our arrangements to place the orders for the Commission within that area one of the Commission, I think Mr. Grunsky, extended the area from which bids could be invited, because the prices were lower, without regard to what I considered prohibitive characteristics of the product from that district—it is very fibrous and susceptible to rapid decay on the Isthmus—so I never bought a stick of lumber at any time west of the Mississippi.

Mr. TOWNSEND. But there has been a large amount purchased west of the Mississippi?

Mr. DRAKE. Since then a quantity of lumber has, I believe, been bought by the Commission in western Louisiana and Texas.

Mr. TOWNSEND. You thought that was not proper material?

Mr. DRAKE. I gave our purchasing agent instructions not to buy that material, regardless of price.

Mr. ESCH. Has the company purchased any lumber on the Pacific slope?

Mr. DRAKE. Not for years. In times past we had consignments of redwood.

Mr. ESCH. I understand that the Commissioners made a contract for something like 3,000,000 feet in the Puget Sound country. Do you know anything of the nature of that timber for use in the tropics?

Mr. DRAKE. No, sir; Mr. Grunsky's criticism of our difficulty in procuring the character of lumber required by the Commission from the regions where we were accustomed to buy was that there was no necessity for making such specifications as ours for use on the Pacific coast, as timber grew so large there that one can get lumber of any dimensions or quality.

Mr. TOWNSEND. Did you get out that specification?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Do you know whether they have since?

Mr. DRAKE. I think they have maintained it.

Mr. TOWNSEND. Have you purchased iron pipe for use on the Isthmus?

Mr. DRAKE. No, sir. I don't think we bought any quantity of iron pipe.

Mr. TOWNSEND. Do you know of any being purchased?

Mr. DRAKE. I believe the Commission purchased a lot of sewer pipe, drain pipe, at Marion, Ohio. I know of that in connection with the expectation we had of moving it by our steamers from New York. Instead of that it went by Mobile.

Mr. TOWNSEND. Do you know whether there was an emergency for the use of that at the time it was purchased?

Mr. DRAKE. I do not, but I should believe it readily. It was for use in a system of water service and drainage in Panama and Colon.

Mr. TOWNSEND. Do you know whether much of it has been used yet?

Mr. DRAKE. I do not.

Mr. TOWNSEND. Do you know whether that was bought by advertisement?

Mr. DRAKE. I do not. We didn't place the order; we had nothing to do with it.

Mr. ESCH. Do you know whether the rate from Mobile to Colon, in addition to the freight rate from Marion to Mobile, would be less than the rate you could give?

Mr. DRAKE. It was less, but it should not have been. It was through an arrangement with our company that the United Fruit Company, which has a large fleet of vessels, something like 50 or 60, operated in connection with the railroad company at Colon. Previously their service had not been extended beyond Port Limon.

I opened negotiations with them, established connection with them first in the fruit business; later on they contracted for local business, and later for through business. Our idea was, as I have explained to the committee before, that the Panama Railroad Company directly or by its co-carriers should be able to insist on the making of rates that would be competitive and advantageous from all points. We favored the United Fruit Company in making such traffic arrangements that are similar to those with other lines on the Atlantic and Pacific. The arrangement was for them to maintain rates from New Orleans and points common to the Isthmus that would be the same as our rate from New York and points common. As our traffic manager testified here, it was the practice of both to absorb the interior. It seems that the United Fruit Company had made an arrangement with the Illinois Central Railroad by which they prorated a through rate from Marion to the Isthmus that was lower than any rate named by the New York Central or the Pennsylvania Railroad via New York.

Mr. TOWNSEND. The rate was better than you could give them at the time?

Mr. DRAKE. Not better than we could have given, but the railroads east had not, up to that time, come into line and joined with us in giving more advantageous rates on through bills from interior points to the Isthmus. We felt that the diversion of the lot to via Mobile was an invasion of our rights, as Marion, Ohio, is in our territory. By their arrangement to prorate the through rate the contractors got a lower figure.

Mr. ESCH. Has the water pipe from the ——— and Calvert Drain Pipe Company been purchased?

Mr. DRAKE. That was canal business, and I don't know.

Mr. TOWNSEND. If you do not know, please say so, and we shall not have any criticism. We understand that it is not a matter directly under your charge.

Mr. DRAKE. I do not like to appear as not knowing, but it is not within my knowledge.

Mr. TOWNSEND. Do you know whether this pipe that was purchased was properly inspected before it was purchased?

Mr. DRAKE. I do not.

Mr. TOWNSEND. Do you know whether or not, after they got the pipe down there, they found they had to change the original order and put in a heavier pipe?

Mr. DRAKE. I do not, sir; but I would like to say, as to lumber, we bought none of it that went forward that was not properly inspected

by qualified inspectors that were engaged by and reported directly to us.

Mr. TOWNSEND. But you do not know whether any of it was changed after the purchase?

Mr. DRAKE. I don't know; no, sir.

Mr. TOWNSEND. Do you know whether any contract for the purchase of lumber or pipe, or any other material for the Commission, was subsequently changed by any member of the Commission?

Mr. DRAKE. I do not.

Mr. TOWNSEND. Do you know whether any contractors requested that it be changed—that any contract be changed?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Do you know whether any contract provided that lumber should be shipped to a particular port, and was afterwards changed by any member of the Commission and sent to another port?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Did you purchase some lavatory supplies for the Government?

Mr. DRAKE. Yes, sir; about \$7,500.

Mr. TOWNSEND. From whom did you make those purchases?

Mr. DRAKE. From several, but principally, I believe, of the Jordan L. Mott Company, of New York.

Mr. TOWNSEND. Did you have specifications for those purchases?

Mr. DRAKE. When the requisitions first came to us from the Isthmus, or the letter first came from Admiral Walker, I believe he said in the letter—

Mr. TOWNSEND. Mr. Anderson, can you find those specifications?

Mr. DRAKE. In this letter of May 19 from Admiral Walker, he says (reads):

I this morning received a letter from General Davis, which came back from Fortune Island by the *Alianza*, sending me the inclosed list of articles which he asks may be shipped to him as soon as possible.

Will you kindly direct your purchasing agent to purchase and ship to General Davis at Colon everything called for on the list, you paying the bills and arranging for us to reimburse you.

He says that all the articles of a special pattern are described in Nott's catalogue of plumbers' goods.

He also wishes three cooking stoves of a size sufficient for eight or ten people, with the necessary stove furniture, such as boilers, pans, pots, etc., and a few spare parts of each of the kind that usually become necessary for making local repairs.

These stoves will not require hot-water backs.

Send waffle iron and muffin pans.

In sending painted wire gauze he asks that it may be sent of a width of 2, 2½, 3, and 4 feet, and he wishes it to be if possible No. 16 mesh; failing that, then, No. 14.

I am afraid I shall give you a lot of bother, but for the present it seems best to make use of your purchasing agent for making immediate purchases. I hope you will agree to that.

Very sincerely, yours,

J. G. WALKER,
Chairman of Commission.

Mr. TOWNSEND. Who signed that letter did you say?

Mr. DRAKE. J. G. Walker, chairman of the Commission. In reply to that letter I wrote in part [reads]:

Mr. Anderson informs me that although in this case he does not feel warranted in ordering articles of other make than brands or makers specified, if he be allowed to buy equally good articles he may effect material economy in future.

Mr. DRAKE. I never have allowed the people on the Isthmus to order a special brand, but directed them to call for what they wanted and we would determine the brand, the quality, and the price.

Now, I received an answer from Admiral Walker to that letter, in which he said, in his letter of May 21 (reads):

Mr. Anderson can always purchase articles other than those of the brands or makes specified of equally good quality, being careful that they are of the same size and will fit the machines properly —

Mr. TOWNSEND. Now, who prepared the specifications for the purchase of those lavatory supplies?

Mr. DRAKE. Mr. Anderson, in accordance with the list handed.

Mr. TOWNSEND. You have those specifications?

Mr. DRAKE. For the plumbing material, yes. Here is a letter from General Davis in regard to that plumbing material.

Mr. ANDERSON. Here are the specifications [handing same to Mr. Townsend].

Mr. TOWNSEND. I want to have these specifications marked Exhibit 2 (the reporter thereupon marks the exhibit as "Exhibit No. 2").

EXHIBIT 2.

No. 188.]

ISTHMIAN CANAL COMMISSION,
Washington, D. C., September, 16, 1904.

Mr. E. A. DRAKE.

Second Vice-President Panama Railroad Company, New York.

SIR: You are requested to supply the Isthmian Canal Commission with the following articles, billed as ordered and itemized at net prices, securely packed for shipment: Material as per list attached.

All goods to be class A. Requisition states same must leave New York on steamer sailing September 20, without fail.

Ship to material department, Isthmian Canal Commission, Panama, and note that same is for M. O. Johnson, supervising architect, for use in the residence of chief engineer.

Send bill of lading and invoice to Mr. E. C. Tobey and mark on same, "Canal Zone requisition No. 133 A-d."

Goods to be delivered Panama Railroad Company, pier 57, foot West Twenty-seventh street, New York, with memorandum showing the contents of each package. All packages to be marked as noted above, the number and date of order to appear on memorandum, bill, package, and receipt.

Very respectfully,

S. E. REDFERN, *Chief Clerk.*

Approved:

J. E. WALKER,
Chairman of Commission.

FIXTURES.

[Morris O. Johnson, Supervising Architect.]

Bathroom No. 1.

1 Prompto low-down water closet, with perfect sanitary screw connection, cellul enamel, white seat and cover, No. 59 low-down cistern, with finish to match the seat; Imperial porcelain floor slab, as shown in plate 52754. All complete. Plate 5286 R or equal.

1 Dorian porcelain-lined 5-foot rolled rim bath tub, with China ball feet, as shown in plate 2159 R, shower and connections not to be included; plain finish. Plate 68 R or equal.

1 Nickel-plated brass combination needle and shower, canvas curtains, soap dish, porcelain-lined iron rolled rim receptor, nickel-plated waste, stainer and coupling, complete, as shown. Plate 228 R, or equal.

1 30 by 24 inch Tremont porcelain lavatory, with nickel-plated brass wall supports, adjustable trap, and nickel-plated supplies to wall; all complete with legs, etc. Plate 4123 R.

All as described above, together with complete toilet fittings.

Bathroom No. 2.

1 Prompto low-down water-closet, as described for bathroom No. 1. Plate 5286 R, or equal.

1 Madison imperial porcelain, lavatory with Hygia waste plug and chain, porcelain standard, nickel-plated compression, low-down faucets with name plates, 1½-inch adjustable trap to wall. Plate 4099 R, or equal.

1 Dorian porcelain-lined 4½-feet; rolled-rim bath tub, with china ball feet, as shown in plate 2159 R, or equal.

Shower, canvas curtain and connections to be furnished. Plain finish, all complete. Plate 68 R, or equal.

All as described, together with complete toilet fittings.

Butler's pantry, second floor.

1 20 by 30 inch rolled-rim, enameled iron sink, with back and right-hand 30-inch ash drip board, with back hinges and telescopic leg, as shown in plate 831 R, complete, with faucets, no trap. Plate 7006 R, or equal.

1 grease trap. Plate 870 R, or equal.

1 22 by 18 by 12 inch rolled-rim, enameled iron slop sink, arranged for pail support, as shown in plate 342; nickel-plated supplies and chambers, complete. Plate 820 R, or equal.

Kitchen and laundry.

1 42 by 22 by 6 inch rolled-rim, enameled iron sink, with right-hand 36-inch ash drip board, as described for butler's pantry sink, complete, with faucets, no trap. Plate 7006 R, or equal.

1 grease trap. Plate 870 R, or equal.

1 24 by 20 by 12 inch rolled-rim, enameled iron slop sink, with nickel-plated supplies and chambers, complete. Plate 820 R, or equal.

1 No. 52 Sun-ray heater and 80-gallon, galvanized-iron hot-water boiler. Plate 1079 R, or equal.

Laundry.

1 Set of 3 Colonial washtubs, size No. 2, with ash cap and wringer. Plate 8006 R, or equal.

1 Single Norwalk lavatory, heavy Colonial ware, with brass plug, and stopper, galvanized-iron supporting frame and leg, 1 self-closing faucet. Plate 4075 R, or equal.

All the foregoing figures refer to Mott's Catalogue R; also all cast-iron pipe and fittings referred to in the following items:

Roughing materials.

35 feet of 5-inch standard single hub soil pipe, tarred. Plate 986 R, or equal.

300 feet of 4-inch standard single hub soil pipe, tarred. Plate 986 R, or equal.

75 feet of 4-inch standard double hub soil pipe, tarred. Plate 987 R, or equal.

120 feet of 2-inch standard single hub soil pipe, tarred. Plate 986 R, or equal.

50 feet of 2-inch standard double hub soil pipe, tarred. Plate 987 R, or equal.

10 4-inch standard Y branches, tarred. Plate 1010 R, or equal.

8 4 by 2 inch standard Y branches, tarred. Plate 1010 R, or equal.

4 4 by 3 inch standard Y branches, tarred. Plate 1010 R, or equal.

16 4-inch standard ½ bends, tarred. Plate 996 R, or equal.

6 4-inch standard ¼ bends, tarred. Plate 994 R, or equal.

15 2-inch standard Y branches, tarred. Plate 1010 R, or equal.

15 2-inch standard ½ bends, tarred. Plate 996 R, or equal.

1 5 by 5 inch standard Y branches, tarred. Plate 1012 R, or equal.

2 5 by 4 inch standard Y branches, tarred. Plate 1010 R, or equal.

2 5-inch standard Y branches, tarred. Plate 1010 R, or equal.

4 5-inch standard $\frac{1}{2}$ bends, tarred. Plate 996 R, or equal.
 2 5 by 4 inch standard reducers, tarred. Plate 1039 R, or equal.
 1 5-inch standard running trap, tarred. Plate 1032 R, or equal.
 12 4-inch standard double hubs, tarred. Plate 1040 R, or equal.
 3 5-inch standard double hubs, tarred. Plate 1040 R, or equal.
 12 2-inch standard double hubs, tarred. Plate 1040 R, or equal.
 25 pounds oakum.
 300 pounds pig lead.
 50 feet 2-inch lead pipe (light).
 100 feet $1\frac{1}{2}$ -inch lead pipe (light).
 12 4-inch pipe hooks.
 12 2-inch pipe hooks.
 6 4 by 2 inch cast-iron tapped T's.
 6 2-inch brass clean-cuts.
 6 4-inch brass clean-cuts.
 4 5-inch brass clean-cuts.
 12 4 by 8 inch lead ferrules.
 12 2-inch lead ferrules.
 100 pounds solder.
 2 4-inch lead bends.
 2 4-inch brass ferrules.
 200 feet $1\frac{1}{2}$ -inch galvanized pipe.
 200 feet 1-inch galvanized pipe.
 650 feet $\frac{3}{4}$ -inch galvanized pipe.
 90 feet $1\frac{1}{2}$ -inch galvanized pipe.
 180 feet 2-inch galvanized pipe.
 175 feet $\frac{1}{2}$ -inch galvanized pipe.
 12 $\frac{1}{2}$ -inch galvanized elbows.
 6 $\frac{1}{2}$ -inch galvanized unions.
 12 $\frac{1}{2}$ -inch galvanized T's.
 30 $\frac{1}{2}$ -inch galvanized elbows.
 12 $\frac{1}{2}$ -inch galvanized unions.
 20 $\frac{1}{2}$ -inch galvanized T's.
 6 1-inch galvanized elbows.
 2 1-inch galvanized T's.
 2 1-inch galvanized unions.
 10 $1\frac{1}{2}$ -inch galvanized elbows.
 2 $1\frac{1}{2}$ -inch galvanized T's.
 2 $1\frac{1}{2}$ -inch galvanized unions.
 12 $1\frac{1}{2}$ -inch galvanized elbows.
 12 2-inch galvanized elbows.
 6 2-inch galvanized 45° elbows.
 6 2-inch galvanized T's.
 1 $1\frac{1}{2}$ -inch gate valve.
 4 1-inch globe valves.
 6 $\frac{3}{4}$ -inch globe valves.
 6 $\frac{1}{2}$ -inch globe valves.
 14 2 by $1\frac{1}{2}$ -inch T's.
 6 2 by $1\frac{1}{2}$ -inch bushings.
 6 1 by $\frac{3}{4}$ -inch bushings.
 6 $\frac{3}{4}$ by $\frac{1}{2}$ -inch bushings.
 24 assorted nipples.
 6 2-inch brass male solder nipples.
 10 $1\frac{1}{2}$ -inch brass male solder nipples.
 12 $\frac{3}{4}$ -inch galvanized lug T's.
 6 2-inch lead P traps.
 4 4 by 8-inch drum traps, nickel-plated screw.

Mr. TOWNSEND. Now, these specifications for the plumbing material closed with this statement:

All the foregoing figures refer to Mott's catalogue R; also all cast-iron pipe and fittings referred to in the following item.

Mr. DRAKE. May I see that one moment, so that I may know what I am talking about?

(Mr. Townsend hands specification, Exhibit No. 2, to Mr. Drake.)

Mr. TOWNSEND. You purchased them of Mott?

Mr. DRAKE. That I can not answer, sir; I don't know. Mr. Anderson has the record of what was done.

Mr. TOWNSEND. Do you know whether all of these specifications applied to the materials that were bought of the Mott Company?

Mr. DRAKE. I believe they did; yes, sir. Here is that letter from General Davis, dated June 1, 1904. (Handing letter to Mr. Townsend.

COLON, PANAMA, June 1, 1904.

Mr. E. A. DRAKE,

Second Vice-President Panama R. R., 24 State St., New York City.

MY DEAR SIR: Your favor of May 24 was received to-day at the hands of Mr. Prescott.

I am glad to know that the plumbing fixtures and other articles are, most of them, en route. The plumbing is to fit up some of the old houses and place them in a condition fit for occupation. One of these houses I hope myself to occupy. I shall be disappointed if the water-closets, urinals, shower hoods and sinks do not arrive by the next boat.

In a memorandum made by your purchasing agent, sent to Admiral Walker, I note that he says that perhaps he could have obtained some of the articles of another pattern on more favorable terms, had you not felt that the directions contained in my letter should be followed literally. The fact is, when I wrote the letter on the steamer coming from New York to the Isthmus, I had but one trade catalogue to which to refer, that of Mott & Co., and so a few of the articles were specified as of that manufacture.

Any other style accomplishing the result would have been just as satisfactory, but I should have said so. The gasoline which you do not send I presume I can obtain here. The insertion against the 2 and 4 inch soil pipe of the words "wrought iron" is a clerical mistake. I had no thought that such words had crept into the schedule. The letter after I first saw it was rewritten, and I am sure these words got in by inadvertence of the typewriter. But the iron pipe will be useful, and I shall be glad to have it, and depend upon receiving the cast-iron soil pipe on the next boat.

I shall bear in mind what you say about the marks on goods to be shipped by the Panama Steamship Line to Colon.

I am expecting a box from the Philippines to be turned over at your wharf in New York by the depot quartermaster, and shall be obliged if you will have the kindness to have it forwarded to me here.

All are well here, and I hope the same condition exists with you.

Sincerely, yours,

GEO. W. DAVIS.

June 8.—Mr. Anderson says that all but slate slabs for urinals of special dimension have gone.

Mr. TOWNSEND. Did this include some 300 water-closets and pipe connections?

Mr. DRAKE. I do not know, but I believe it did, sir.

Mr. TOWNSEND. Can you say whether or not those water-closets and pipe connections were ones that had been on hand with the J. L. Mott Company for some time?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Can you state whether or not this particular closet which was purchased and sent down to the Isthmus had been rejected by the board of health of the city of New York?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. You could not say that?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. But the specifications which you received here fitted the Mott water-closet that you purchased?

Mr. DRAKE. Yes, sir; I so understood.

Mr. TOWNSEND. Has any other company, to your knowledge, furnished any lavatory or plumber's supplies to the Commission aside from the J. L. Mott Company?

Mr. DRAKE. There must have been some, but not extensive.

Mr. TOWNSEND. Nearly all of that was furnished by the J. L. Mott Company?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Did you purchase some document cases, files, and so forth, for the Commission?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Of whom did you purchase those?

Mr. DRAKE. I think almost all of those cases were standardized; that is, for example, they would call for the Globe-Wernicke case, a special make. In such cases those orders were filled, because they were asked for.

Mr. TOWNSEND. They specified that you were to purchase the Globe-Wernicke case?

Mr. DRAKE. As I recall that, yes, sir; and others, the Amberg file, I think it is, and where those were specified they were bought.

Mr. TOWNSEND. There was no bid for those?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Do you know who drew those specifications?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Will Mr. Anderson know that?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. There were no bids for the water-closets to which we have referred?

Mr. DRAKE. That I don't know, sir. In explanation of that I want to say that in the course of my duties—the method having been established that we were to buy for the Commission—when the letter inclosing a requisition was received, I would note it and refer it to Mr. Anderson, to comply under all of our requirements under the circumstances as though we were buying for ourselves. That was done absolutely, and our files, which Mr. Anderson has with him, will establish that fact. And this answer that I am now making, in which I may appear to exhibit a lack of knowledge, is because the routine and detail of that was particularly in Mr. Anderson's hands, in whom I had the utmost confidence.

Mr. TOWNSEND. So that, as far as your knowledge extends, there were no competitive bids made for the water-closet and that kind of plumbing materials, nor for file cases nor desks?

Mr. DRAKE. No, sir; as we understood that the closet material was something that was needed promptly.

Mr. TOWNSEND. Do you know whether they have all been used that were purchased?

Mr. DRAKE. I do not, sir.

Mr. TOWNSEND. Did you purchase some of the office furniture and equipment here in the city of Washington?

Mr. DRAKE. I don't think we purchased any in Washington.

Mr. TOWNSEND. Do you know whether there were any bids presented for office furniture?

Mr. DRAKE. The name of W. B. Moses & Sons was presented, I think.

Mr. TOWNSEND. Of this city?

Mr. DRAKE. Yes, sir; it was added to our mailing list, and bids were invited from them.

Mr. TOWNSEND. They are retail dealers?

Mr. DRAKE. I understand so. I know that a number of orders have been placed with that concern.

Mr. TOWNSEND. Do you know whether any wholesale dealers were invited to bid on that matter?

Mr. DRAKE. Oh, yes, sir; we invited bids from wholesale concerns in New York. When you ask me if I know I must say that I do know, because it is reported to me. Wholesale concerns had complained that orders had been placed with retail concerns in Washington who bought their material from the same factories that the wholesale concerns did, and they expressed surprise and a determination to ask why the orders were so placed.

Mr. TOWNSEND. Did you see any of the bids?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. You don't know from your own knowledge whether they were made or not?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Did you purchase under the instructions, or at the request, of the Commission any material from commission merchants or others, and then afterwards purchase some of the same material from the manufacturers; any supplies?

Mr. DRAKE. No, sir. Do you refer to the same material, or same class of material?

Mr. TOWNSEND. Same class of material.

Mr. DRAKE. In buying for the railroad if we felt that we could buy in quantity cheaper by going back of the agents, we would do it.

Mr. TOWNSEND. I asked you if you did find in the purchase of supplies that if not purchased from commission merchants or dealers you could go back behind them and get supplies of the same class cheaper?

Mr. DRAKE. I think there were cases of that kind, but I could not give them to you specifically. Mr. Anderson can. My instructions to him, in buying anything for the railroad or the Commission, were that where he can buy cheaper of the manufacturer he was to do so and save the difference.

Mr. TOWNSEND. Do you recall any instance where such a purchase was made and the Commission or any member of it, or any one representing the Commission, came to you afterwards and discussed the question of your having purchased articles cheaper of the manufacturer, and they ordered you to purchase or directed you to purchase of the dealer?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. And you never have been asked to try and harmonize any such differences?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. To your knowledge?

Mr. DRAKE. No, sir.

Mr. TOWNSEND. Do you know whether, in this connection, any goods at any time were purchased by the Commission, or you as its agent, or anybody else as its agent, known to you—any supplies or goods of the Manhattan Trading Company, of New York?

Mr. DRAKE. I believe that immediately after the arrival of the Commission on the Isthmus there was an urgent need of a large quantity of medical supplies. The Commission, at the instance of Doctor Gorgas, chief medical officer on the Isthmus, authorized Colonel Turrill, medical purveyor to the Army in New York, to buy it—I think they appropriated \$25,000 to buy miscellaneous supplies that were required in the medical department. Colonel Turrill did buy those supplies, miscellaneous in character; for instance, 1,500 garbage cans, 1,200 slop pails, and a large lot of medical supplies, and they were sent to our pier indiscriminately, and to be forwarded with the utmost dispatch.

They were dumped down upon our pier, addressed to the medical department on the Isthmus, without compliance in any way with our shipping requirements—cargo going to a foreign country must have a proper manifest and consular papers—and being there, knowing of their need, we accepted them and forwarded them without bills of lading, which were prepared and sent forward by a later departure. I recall that most of the confusion in the delivery of consignments to the Commission on the Isthmus was due to haste in handling purchases made under that authority. It could have been avoided had the buying been done through the medium of our purchasing department.

Mr. TOWNSEND. These goods that you are speaking about now were purchased of the Manhattan Supply Company, of New York?

Mr. DRAKE. Some of them.

Mr. TOWNSEND. Now, do you recollect whether any such materials—similar materials—were purchased and forwarded directly from the manufacturers of those materials?

Mr. DRAKE. I can not say as to that, sir.

Mr. TOWNSEND. Did you ever have occasion to investigate the prices for these materials to the Manhattan Trading Company as compared with the price of the manufacturer?

Mr. DRAKE. We knew something of the purchases through our having to prepare the shipping papers later. The clerks employed in that business in our purchasing department, under Mr. Anderson, and I think Mr. Anderson himself told me the prices paid were in many instances higher than we were paying for similar articles.

Mr. TOWNSEND. Mr. Anderson knows that?

Mr. DRAKE. He knows all about that.

Mr. TOWNSEND. Do you know whether or not the Canal Commission has an attorney or counsel?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Who is he?

Mr. DRAKE. Judge Magoon.

Mr. TOWNSEND. He is here?

Mr. DRAKE. He is here. His office is in the War Department, near that of the Secretary of War.

Mr. TOWNSEND. Was he consulted in regard to drawing specifications and contracts at that time or not?

Mr. DRAKE. I believe he was not appointed counsel until a good deal of this business had been done.

Mr. TOWNSEND. Do you know whether the Canal Commission has any agent outside of the city of Washington, or in Washington, so far as that is concerned, who acts in any capacity with manufacturers

desiring to sell supplies, with a view to finding out what they can be had for by the Commission?

Mr. DRAKE. They have a purchasing agent and an assistant purchasing agent.

Mr. TOWNSEND. Who are they?

Mr. DRAKE. Major Gallagher has recently been appointed purchasing agent, and Mr. Anderson has left our service and is now the assistant purchasing agent of the Commission.

Mr. TOWNSEND. Who is the secretary of the Commission?

Mr. DRAKE. Mr. D. I. Murphy.

Mr. TOWNSEND. What was his business before he was elected secretary of the Commission?

Mr. DRAKE. I do not know, sir. I understood that he held an official appointment under Mr. Cleveland; but what, I do not know.

Mr. TOWNSEND. You do not know whether he was connected in any way with any of the firms from which supplies have been purchased since he went on the Commission?

Mr. DRAKE. No, sir; I do not.

Mr. TOWNSEND. Did you have anything to do with the purchasing of any coal for the Commission?

Mr. DRAKE. Panama Railroad Company has sold the Commission the coal they required on the Isthmus.

Mr. TOWNSEND. Do you know of their purchasing any besides that?

Mr. DRAKE. I do not believe they purchased any besides that.

Mr. TOWNSEND. I do not think I have any more questions to ask of Mr. Drake in regard to this matter.

Mr. ESCH. I would ask whether Mr. Drake knows anything about the purchase of lumber on the Pacific slope or not?

Mr. DRAKE. I do not, sir, of my own knowledge; but I believe, from observation only, that Mr. Grunsky was the one who placed those orders, believing in the quality and character of the Pacific lumber and its adaptability to the requirements of the Commission. It seemed to us, accustomed to other classes of material, a radical departure.

I doubt if any of that material has been delivered yet. A very large order was placed there—several millions of feet. Transportation was arranged by the contractors with the Kosmos Line, a German line, and the Commission has had to increase its terminal facilities at La Boca in order to receive the lumber and escape demurrage.

Mr. ESCH. Do you know anything about the relative rates for the transportation of lumber from California, or the Puget Sound country, in comparison with the rates from the Gulf?

Mr. DRAKE. It is a longer haul. The difference is between \$8 and \$12 a thousand.

Mr. ESCH. Would not the difference be at all neutralized by the cost of transporting the lumber from Colon over the line of road?

Mr. DRAKE. I think the difference would be neutralized by the first cost.

Mr. ESCH. Is it not a fact that the lumber mills in the Puget Sound country are so much nearer the ports that the rail haul would be much less than on the Gulf? Would not that have a tendency to neutralize the difference in cost?

Mr. DRAKE. That would affect the first cost. The mills are all practically on the water front, right on the Sound. Much of the material we buy in the South has to be brought from the interior to

the lading point. In fact nearly all the lumber we bought had to be transported by rail to Mobile and New Orleans.

Mr. ESCH. So that, if the Pacific coast lumber is of suitable quality and can endure the climate, would it not be practicable, and in fact wise, to purchase a considerable portion of the lumber on the Pacific slope?

Mr. DRAKE. I can say that Mr. Grunsky appeared to be thoroughly convinced of that. Experience will demonstrate whether that material will stand. He considers that it is a great advantage to get on the Pacific coast what we can of "dimension timber." It is not necessary there to specify as to freedom from knots, and so on, as because of the large tree growth one need only say what is wanted to get it.

It is a question of what that dimension lumber will stand down there. We secure 12 by 12 and 12 by 14, but little in excess of those sizes, and they, I believe, can specify and get 12 by 18 and 16 by 14, and all sorts of dimensions. The greater the surface of lumber exposed and not creosoted on the Isthmus the greater the certainty of decay. A wooden object down there looks intact, but when you tap it it falls to pieces. You see that frequently in posts and stanchions.

Mr. ESCH. Is that due to the toredo?

Mr. DRAKE. Yes; it works inside.

Mr. ESCH. Do you know whether the Pacific lumber will resist it?

Mr. DRAKE. I do not know.

Mr. ESCH. Has anybody else used the Pacific lumber on the Isthmus?

Mr. DRAKE. Until a short time ago all the Pacific lumber I knew of at the Isthmus were certain consignments of California redwood. The company must have had experience with Pacific lumber that I am not aware of. Our requirements are supplied by semiannual requisitions from the Isthmus, and the lumber is purchased on this side as best suited to necessities as shown by results.

Mr. LOVERING. Mr. Drake, one question: May I ask you, so far as you have purchased on account of the Commission, is it your opinion that the Government has done as well and suffered as little by your methods of purchasing as it would have done if it had advertised its bids?

Mr. DRAKE. I think it has done quite as well, if not better, as we used every precaution and the best methods in buying the material by competition from the high-grade concerns that we had often dealt with for the railroad.

Mr. TOWNSEND. Can you explain how your methods could have been better?

Mr. DRAKE. These orders were handled promptly. We availed of the then condition of the market, and if we had to buy the same material to-day, only a few months later, the cost would be from 25 to 33½ per cent higher. We secured low prices for the material and for its transportation to Colon; had there been delays of any kind, there would have been a material increase in cost. The only hypothesis on which one might say we could have done better would be to assume that by advertising we could have bought small quantities of materials from many different small concerns and that thereby the aggregate might have been cheaper. I do not believe the orders in bulk could have been placed better than they were.

Mr. ESCH. Have you any data to show what percentage of the supplies that have gone to the Canal Commission has been conveyed by

you, and what percentage has been conveyed by other means of transportation?

Mr. DRAKE. I could establish that for you, but not offhand. I can say that all the lumber and the sewer piping that has been referred to here were carried from the Gulf. Some cars and explosives have been carried by others than our own line from Atlantic coast ports because we can not carry them. There are damaging and dangerous cargoes, such as crude petroleum, which have been carried by other lines and by our colliers on which we have reserved space.

Mr. ESCH. Who has carried the dredges and other heavy machinery?

Mr. DRAKE. They have been carried by our vessels. Owing to severe weather conditions there has been a good deal of confusion in getting forward those 70-ton shovels, of which some of the parts are still missing. As I explained to the Commission only yesterday, that was due to conditions before they reached us.

Mr. ESCH. I notice the statement of Burr, Davis & Parsons. Three are now operating in the cut. The question arose in my mind in this way: Why would it not be an advantage to the Government to ship everything by your line of steamers, in view of the fact that the Government owns the transportation line?

Mr. DRAKE. It is deeply settled in my mind that that is the position which the Government ought to take. I hate to use the word that comes first in my mind—the word “compel”—and I do not use it offensively, I assure you; but the Panama Railroad steamship line can either make a rate that is low enough to secure the freight or can compel other lines by competition to lower their rates. There are 200 dump cars and a lot of other material going forward shortly. At first the foreign steamship lines wanted a rate of \$4 a ton on them, but by a threat to carry them by our line I got them down to \$2.25.

Mr. TOWNSEND. Where were they manufactured?

Mr. DRAKE. They were manufactured in Pennsylvania. They can go either by Norfolk or Jersey City. The contract was placed by the Commission, and the contractors were directed to us for a rate, and we named a rate in competition with other lines that brought the figures down. That method can be applied, if intelligently handled, to every ounce of material that goes from the United States to the Isthmus. It will save the Government largely on the cost of the canal.

Mr. ESCH. The thing I had in mind was, whether all this stuff ought not to be carried by the Panama Railroad Company?

Mr. DRAKE. Yes; we can determine what the rate on steam shovels, or ties, or anything can be from the seaboard by simply saying, “If you do not do it, we will do it.”

I fail to see why it can not be done now as it was in the previous construction period. If the Government abandons its present position at the behest of or in compliance with the hue and cry of foreign interests (the most of it is raised by foreign steamship lines that want to get in) it will lose its coin of vantage. There can be no loss in maintaining this position, I claim, because resulting earnings can be applied to a reduction of the cost of canal construction. It is a position of absolute dominance which it is proposed to abandon in deference to a demand that has been maintained ever since the Panama Railroad has operated its steamship line, that sea connection with the railroad should be thrown open.

Mr. LOVERING. That would put the Government at the mercy of outsiders?

Mr. DRAKE. Yes, sir. Some of the strongest and best lines operated out of New York charged high rates for the transportation of necessities and conveniences to the Army when it was in Cuba, and to those attached to the United States service a charge of \$5 a package was made, I believe, to the soldiers in the field, while the Panama Railroad and Steamship Line is now carrying packages at 50 cents delivered. This shows what can be done, and to abandon that would simply be to compel the Government and its accredited engineers and contractors and everybody else working in connection with the canal to pay the transportation rates that would be exacted by the other lines.

Mr. TOWNSEND. Has that principle of competition been employed by the Commission in shipping supplies there?

Mr. DRAKE. Yes sir, throughout; absolutely.

Mr. TOWNSEND. That was when you were doing the purchasing?

Mr. DRAKE. No; when I was doing the forwarding. They placed an order for 200 cars with the Standard Steel Company f. o. b., which means delivered to the ship at its loading point. When the goods are inspected they are delivered to you there, and ordinarily the liability of the furnisher ends. The Commission buys f. o. b., New York, yet keep control of the goods until they get to the Isthmus, and insist on the inspection there, with the right to reject anything that is not up to specification. Of necessity they have to pay higher prices on that account.

Mr. TOWNSEND. In connection with the purchase of lumber, you were, in a certain communication from Mr. Walker, as to the purchase of lumber—you were ordered and directed to purchase lumber known as "all heart," were you not?

Mr. DRAKE. Yes, sir.

Mr. TOWNSEND. Now, did that necessarily restrict the area from which you could purchase that material?

Mr. DRAKE. It is the highest grade of material, and could only be bought where it could be found.

Mr. TOWNSEND. Where could it be found?

Mr. DRAKE. With the specifications "all heart" you can go to any lumber center and have them furnish it to you, but you will be charged with the cost of procuring it. It is an extreme specification, and most of the people that we invited bids from refused to bid on a specification of that kind, because they claimed it was impossible to meet.

Mr. TOWNSEND. How many firms in the United States could comply with that provision?

Mr. DRAKE. Very few of them would undertake to do so. A representative of one of the largest concerns came to me and said, "Mr. Drake, I would like to get the business for our mills and I am perhaps better equipped to handle it than most others, but I must decline to bid on it because I can not meet the specification of 'all heart,' and you will not probably get 'all-heart' timber. When you get the timber on the ground delivered to you as 'all heart' you will probably accept it whether it is so or not, because you need the lumber."

Mr. TOWNSEND. Do you know whether that prophecy is carried out?

Mr. DRAKE. We suppose it is "all heart." The lumber was

inspected as "all heart," and paid for as "all heart," and has gone forward as such. It is a much higher grade of lumber, and involves a great deal of difficulty to secure it.

Mr. TOWNSEND. What firms have furnished "all heart?"

Mr. DRAKE. The Spottiwood and Turner Lumber Company, and the Day Cook Lumber Company, of New Orleans.

Mr. TOWNSEND. Where is the other?

Mr. DRAKE. In Alabama.

Mr. TOWNSEND. I think that is all.

Mr. ESCH. In order to make a good deal of this inquiry pertinent, I guess you had better read that part of the President's instructions to the Commission in reference to bids.

Mr. TOWNSEND. Yes, I will read paragraph 4 of the President's letter placing the Isthmian Canal Commission under the supervision and direction of the Secretary of War and defining the jurisdiction and the functions of the Commission, dated at the White House, Washington, D. C., May 9, 1904, and directed to the Secretary of War. Section 4 is as follows:

4. To make and cause to be executed after due advertisement all necessary contracts for any and all kinds of engineering and construction works.

You say you are familiar with that?

Mr. DRAKE. Yes; and in that connection I refer again to my testimony that general counsel of the railroad company was consulted as to the legality or propriety of our acting as agents of the Commission in placing the orders as they were received from the Commission, in accordance with our practice, without advertisement, and upon the advice we received we felt that that restriction did not apply to the company, which was a private corporation.

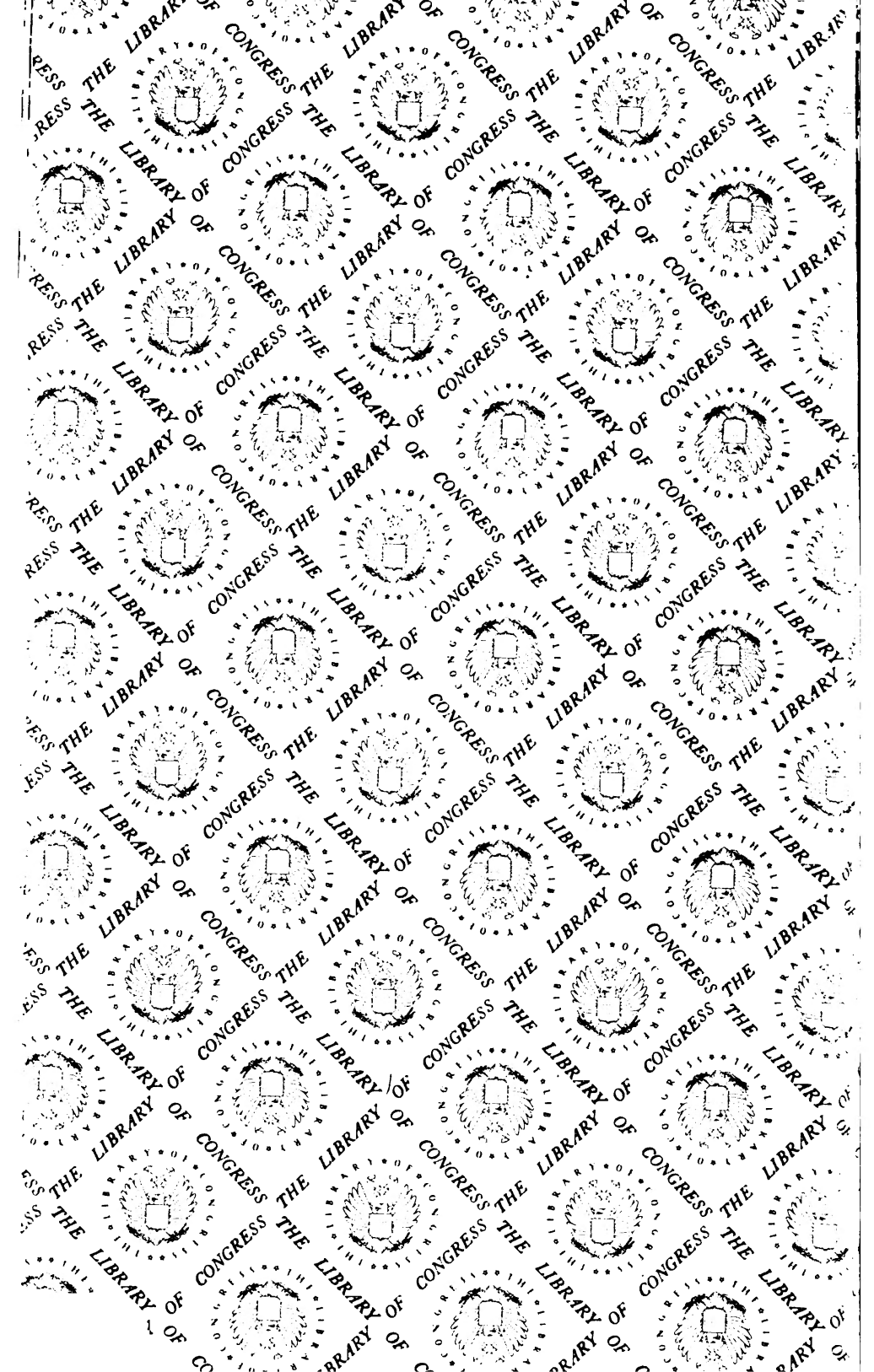
Mr. TOWNSEND. Of whom did you ask advice?

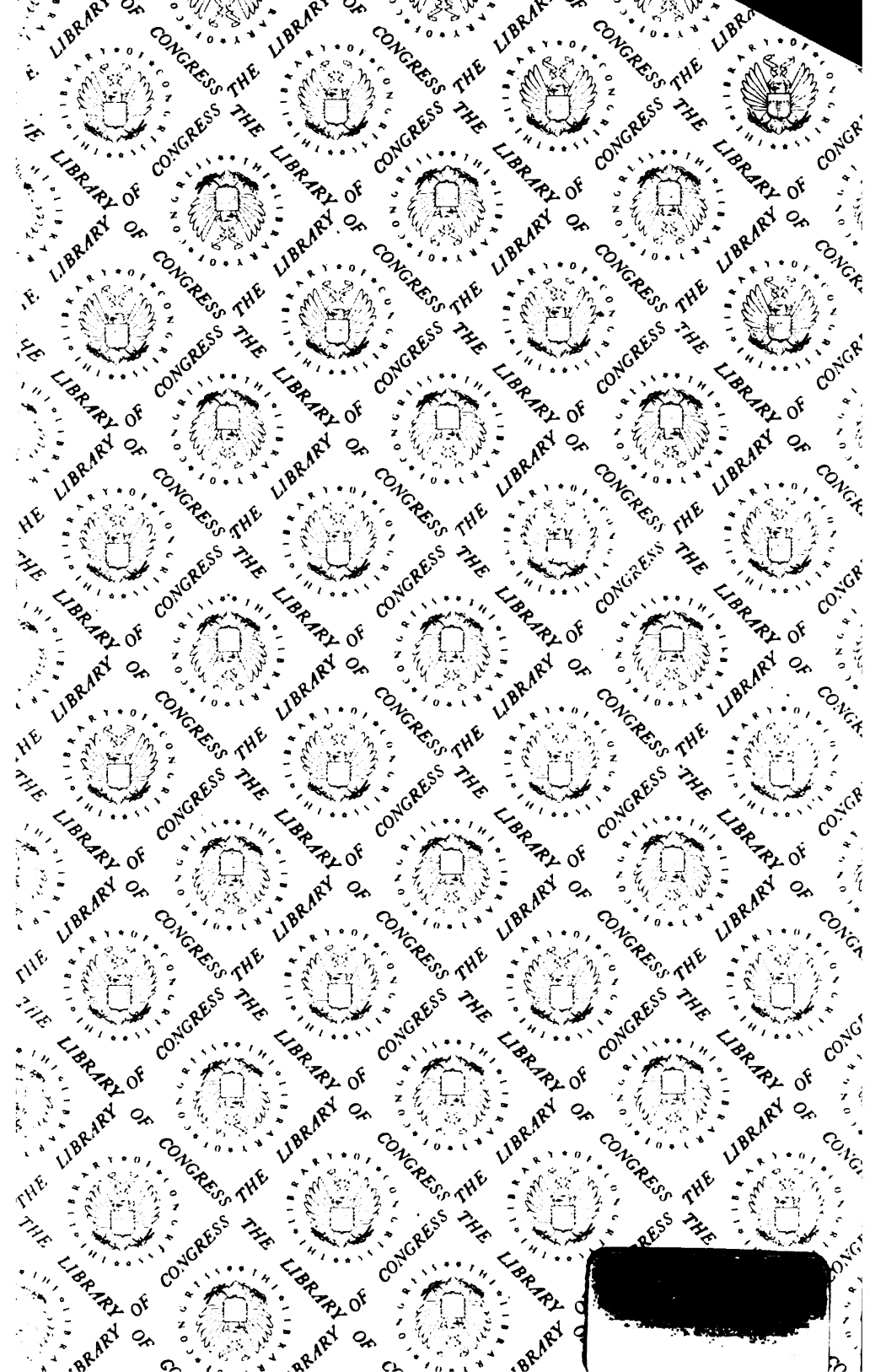
Mr. DRAKE. Of Mr. Cromwell, our counsel, who is also a member of our executive committee.











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